

## **General Terms and Conditions (GT&C) of BAG electronics GmbH as of 01.01.2018**

### **I. Scope of Application**

1. The following GT&C shall be applicable to any and all deliveries and services of BAG electronics GmbH to Ordering Party. For future business relationships, these GT&C shall also be deemed included even if they were not expressly referred to once more. Any deviations from these GT&C shall only become a contractual component if these deviations constitute the subject matter of a separate express agreement in writing entered into between BAG electronics GmbH (herein referred to as "BAG electronics") and Ordering Party.
2. Ordering Party's general terms and conditions are herewith rejected. They shall only be deemed to have been agreed upon if BAG electronics has expressly consented to them in writing.
3. If declarations in accordance with these T&C must be made in writing, this requirement shall also be deemed maintained by the text form in accordance with § 126b BGB (German Civil Code).

### **II. Regulations in the Country of Destination and Safety Devices**

1. Ordering Party shall bring to the attention of BAG electronics, at the latest when ordering, the regulations and standards with respect to the execution of the delivery, the operation, and the prevention of disease and accidents in the country of destination.
2. Any and all products supplied by BAG electronics are manufactured on the basis of the relevant testing regulations. The certification marks awarded for the respective product are noted in the data sheets, on the product itself, and in the instructions for use.

### **III. Subject Matter of Contract/Prices**

1. The written order confirmation issued by BAG electronics shall constitute the basis of the contract and shall be decisive for the content and scope of delivery and service.
2. The competence of the written order confirmation shall also be applicable to orders to her commercial agents and/or field representatives.
3. Any and all subsidiary agreements, supplements, etc. must be in written form to become effective.
4. All technical data in the catalogues and other sales literature, lists and drawings as well as weights and dimensional details issued by BAG electronics have been drawn up with all due diligence. In case of obvious errors, we reserve the right to carry out subsequent changes/corrections.
5. The price lists applicable at the time of entering into the contract shall constitute the basis for price calculations. Value Added Tax at the respective statutory rate shall be added to all prices where appropriate.
6. All prices are quoted ex works and do not include packaging and insurance unless already agreed.
7. Prices shall be agreed upon in Euro. If any other currency is applied, the exchange rate into Euro shall be stated for all transactions. The specification of the currency is compulsory for all transactions.
8. If no fixed price has been expressly agreed, the prices shall remain binding up to and including the delivery date stated in the order confirmation. If no such delivery date has been agreed upon, BAG electronics shall be bound to the prices agreed upon for a period of four months from the date of the order confirmation. BAG electronics shall thereafter be entitled to effect reasonable price increases in the event of costs rising subsequent to the order confirmation, provided it is not already in default of delivery.

9. In the event of any changes in the exchange rate to the Euro of more than 3% on the date of payment (in comparison to the exchange rate on the date of the order confirmation) BAG electronics shall be entitled to effect an adjustment of prices prior to expiry of the four months unless already agreed in writing. This shall not apply in the event of a default in delivery for which BAG electronics is to blame.

#### **IV. Delivery Dates/Default of Delivery**

1. The compliance with delivery dates shall be conditional on the timely receipt of all necessary details to be communicated by Ordering Party, the provision of documents, the required permits (including any necessary import licences) and approvals, in particular of plans, and on the agreed terms of payment being observed including the punctual payment of any deposits separately agreed upon for individual cases, the punctual provision of letters of credit, and the discharge of any other obligations on the part of Ordering Party. If these preconditions are not fulfilled in a timely fashion, the delivery dates shall be reasonably extended, provided BAG electronics is not responsible for such a delay.

2. Transactions at a fixed date (fixed date deliveries) shall require express written confirmation.

3. If the non-compliance with delivery periods is due to Force Majeure, e.g. acts of God, mobilisation, war, riots, or similar occurrences, e.g. accidents, strike, lock-outs, substantial breakdowns, administrative measures, or omissions, etc., the prescribed periods shall be reasonably extended.

4. Such a reasonable extension of delivery periods shall also occur in the event of unpunctual internal delivery on the part of BAG electronics, including delayed or incorrect delivery of the required raw materials, semi-finished or finished products.

5. The delivery period shall be deemed to have been observed if the operable goods have been dispatched, or notice of readiness for dispatch has been issued, respectively, within the agreed delivery period.

6. If the delivery date or delivery period, respectively, is not complied with on the part of BAG electronics, Ordering Party shall be obligated to set BAG electronics a reasonable subsequent delivery period in writing. Should BAG electronics culpably not deliver within this set subsequent delivery period, Ordering Party shall be entitled to withdraw from the contract.

7. To the extent that BAG electronics is responsible for the non-compliance with bindingly accepted dates, Ordering Party may, upon fruitless expiry of the subsequent delivery period set by Ordering Party – provided Ordering Party substantiates that Ordering Party has suffered damages arising therefrom – demand compensation for each complete week of the delay amounting to 0.5% respectively, however not exceeding a total of 5% of the price of the supplies or services affected by the delay. This limitation of liability shall not be applicable if intent or gross negligence are held against BAG electronics or if BAG electronics is compulsorily liable due to any injury to life, limb or health.

8. Ordering Party shall be obligated, at the request of BAG electronics, to declare within a reasonable period whether it intends to withdraw from the contract and/or demand compensation instead of performance and/or insist on the delivery.

9. If, at Ordering Party's request, shipping or delivery is delayed beyond the date provided for in the contract, BAG electronics may not invoice Ordering Party with storage charges until ten working days following notice of readiness for shipping at the earliest, where storage charges shall amount to 0.5% of the invoiced sum for any month or part of a month, but shall not, however, exceed 5%. The Parties to the Contract shall be at liberty to provide evidence of higher or lower storage costs.

#### **V. Terms of Delivery**

1. BAG electronics shall be entitled to effect partial shipments on a reasonable scale.

2. Customary increased or short deliveries of up to 10% of the ordered quantity shall be admissible unless a variance in the contract quantities would in individual cases be unreasonable for Ordering Party.
3. Variances with respect to the weight, the technical execution, the manufacture and the amount of the goods to be supplied shall be admissible within the tolerance limits customary in trade.
4. Additionally, Ordering Party shall consent to all deviating modifications in the construction and equipment of the delivery items within the scope of technical progress entailing a technical advancement of the goods.

#### **VI. Packaging, Shipment, Passing of Risk**

1. BAG electronics shall select the type of packaging and if pre-agreed shipment as it deems appropriate.
2. Unless expressly agreed upon otherwise, transportation costs shall be borne by Ordering Party and shall be reimbursed to BAG electronics if this outlay has been paid by the latter.
3. The risk of accidental loss and/or damage shall pass to Ordering Party upon shipping, or upon handing over to the person carrying out the transportation, respectively.
4. This shall also be applicable in the event that BAG electronics carries out the transportation itself, or has it carried out by its vicarious agents, respectively.
5. Moreover, all risk shall pass to Ordering Party once the latter is in default of acceptance following receipt of notice of readiness for shipment from BAG electronics.
6. BAG electronics shall be entitled, but not obligated, to take out separate insurance to cover the customary risks (damage caused by breakage, transport and fire) on behalf of and to the account of Ordering Party.
7. If any goods are returned for reasons for which BAG electronics is not responsible, Ordering Party shall bear all risk until the goods were received by BAG electronics.

#### **VII. Terms of Payment**

1. The invoices from BAG electronics shall be payable within 30 days upon their issue (according to date of invoice), without any deduction unless already agreed in writing. The payment shall be deemed to have been effected once BAG electronics can avail itself of the amount. Should Ordering Party not pay within the payment period, i.e., within 30 days of the date of invoice, Ordering Party shall be in default even without any reminder.
2. If the point in time of receiving the invoice or statement of account or the delivery of the same is uncertain, payment shall become due at the latest 30 days after receipt of the consideration. Default shall therefore occur no later than from the 31st day following receipt of the consideration.
3. If Ordering Party is in default, BAG electronics may demand from an Ordering Party that is not a consumer, interest on arrears in the amount of 9% p.a. above the respective basic rate of interest according to § 247 BGB (German Civil Code). Any right to assert further claims for damages shall not be affected by this.
4. BAG electronics shall not be obliged to accept bills of exchange. These shall only be accepted by special agreement in individual cases in fulfilment of. The payment shall not be deemed to have been effected until the cheque or exchange has been honoured. The discount and collection charges for the exchange shall be borne by the issuer of the exchange at maturity of the claim and shall be payable immediately in cash.
5. Independent of any payment agreements entered into separately in individual cases, payments due to BAG electronics shall become immediately payable if circumstances occur with respect to Ordering Party's legal person that make it unreasonable to continue to adhere to payment agreements entered into. This shall be the case if there is substantiated evidence

of a significant deterioration of the financial position of Ordering Party, in particular upon suspension of payments, cheque and exchange protests or default of payment, if it is apparent from this that the claim of BAG electronics to the consideration is endangered as a result of Ordering Party's lack of ability to perform.

6. In this event, BAG electronics shall additionally be entitled to return any cheques or re-discountable bills of exchange that were accepted in fulfilment.

7. BAG electronics shall furthermore be entitled in such a case to demand matching payment with delivery or to demand the provision of additional securities. Above and beyond this, BAG electronics shall be entitled to specify a reasonable term within which Ordering Party, at the discretion of BAG electronics, shall simultaneously provide payment or security in exchange for performance. BAG electronics may withdraw from the contract upon futile expiry of the said term.

8. Within the scope of the warranty for defects, Ordering Party may withhold payment after making a justifiable notice of defects only to an extent that is in due proportion to the incurred defect of quality. Ordering Party shall be entitled to a right of retention only in case of counter-claims that have been legally determined, are undisputed, have been acknowledged by BAG electronics, or are synallagmatic to the main claim. Furthermore, Ordering Party shall be entitled to exercise a right of retention to the extent that its counter-claim is based on the same contractual relationship.

9. Ordering Party shall have a right to offset claims only if its counter-claims have been legally determined, are undisputed or have been acknowledged by BAG electronics, or if they are synallagmatic to the main claim.

#### **VIII. Reservation of Title**

1. The goods supplied (goods subject to reservation) shall remain the property of BAG electronics until all claims on the part of BAG electronics against Ordering Party arising from the business relationship have been satisfied.

2. To the extent provided for by the laws of the recipient country, BAG electronics shall be entitled – with the participation of Ordering Party – to have the reservation of title entered into an appropriate register.

3. In the absence of a provision comparable with reservation of title in Ordering Party's country, BAG electronics may – upon order placement – require a bank guarantee in the amount of the order concerned.

4. Ordering Party shall not be permitted to pledge or transfer ownership by way of security for the duration of the reservation of title. In the event of any pledge, seizure or other disposition or intervention by third parties, Ordering Party shall immediately notify BAG electronics of the same.

5. In the event that Ordering Party resells the unpaid goods to a third party, the goods shall remain the property of BAG electronics until they have been paid for in full. Ordering Party shall be obliged to notify said third party of this situation (extended reservation of ownership).

6. A sale in the ordinary course of business shall not exist if the goods subject to reservation are pledged or transferred by way of security to a third party, or made the object of factoring by Ordering Party, in violation of Par. 4.

7. In the event of goods subject to reservation being processed or treated, this shall be carried out for and on behalf of BAG electronics as the manufacturer within the meaning of §§ 950 ff. BGB (German Civil Code). In this case, BAG electronics shall be lawfully entitled to (joint) ownership of the articles emerging from the processing or treatment of the goods subject to reservation in the proportion of the goods subject to reservation to the value of the new article

at the time of the said processing and/or treatment. BAG electronics shall likewise be entitled to a proportional co-ownership in/of the new article whenever goods belonging to third parties are processed together with the goods subject to reservation. If Ordering Party sells the article newly manufactured by Ordering Party to another party, Ordering Party herewith assigns as security [to BAG electronics] the claim due to Ordering Party arising from that sale in the amount of the value of the goods subject to reservation.

8. Ordering Party shall immediately notify BAG electronics if the goods subject to reservation are damaged or otherwise impaired. Any claims against third parties arising from the damage or impairment in favour of Ordering Party shall herewith be assigned as security to BAG electronics.

9. To the extent that the value of all security interests to which BAG electronics is entitled exceeds the amount of all claims covered by security by more than 20%, BAG electronics shall, if requested by Ordering Party, release a corresponding portion of the security interests.

10. Should Ordering Party neglect any of its duties, in particular in case of default of payment, BAG electronics shall be entitled to withdraw from the contract and take back the goods subject to reservation. Ordering Party shall be obligated to surrender the same. The taking back of the goods subject to reservation, or the enforcement of the reservation of title alone shall not require withdrawal by BAG electronics and shall not be deemed an implied declaration of withdrawal from the contract unless BAG electronics expressly declares that these acts are to be understood as a withdrawal.

#### **IX. Acceptance and Initial Operation**

1. The Ordering Party may not refuse to accept deliveries due to insignificant defects.
2. In the initial operation of products made by BAG electronics, it is essential to observe the wiring diagrams in the catalogues, instruction manuals and also in the wiring schemes attached to the products themselves as well as the standards and regulations for mounting and dismounting/assembly and disassembly applicable in the respective countries.

#### **X. Warranty:**

1. No claims for defects shall exist in the event of only insignificant deviation from the agreed upon condition and only insignificant impairment of the serviceability.
2. Furthermore, no claims for defects shall exist in case of fair wear and tear or of damage arising subsequent to the transfer of risk as a result of incorrect or negligent handling, excessive stress/use, fair wear and tear within the normal scope of utilisation, faulty installation work, unsuitable working materials, unsuitable operating materials, non-observance of operating instructions, inadequate maintenance, or of damage resulting from particular external (e.g. chemical or electrolytic) influences that are not presupposed according to the contract, as well as in case of non-reproducible software errors.
3. If any improper alterations, installation, removal or repair work is carried out by Ordering Party or by third parties, no claims for defects shall exist for these nor for any consequential claims for defects resulting therefrom.
4. Ordering Party shall promptly examine the goods sent to it to ensure their proper condition and shall notify BAG electronics in writing of any apparent defects within a period of five working days following receipt of the goods. This term shall be applicable to concealed defects from the time they were discovered.
5. In the event of a substantiated notice of defects, i.e., upon the presence of material defects which, or the cause of which, already existed at the time of the transfer of risk, BAG electronics shall be entitled, at its discretion, to provide subsequent improvement (removal of defects) or subsequent delivery (replacement).



6. If BAG electronics supplies a faultless item for the purpose of subsequent performance, Ordering Party shall surrender the defective article. This shall correspondingly be applicable to defective components if these are replaced by faultless components within the scope of the subsequent improvement.

7. If BAG electronics is not able to provide subsequent improvement or delivery, or if it is entitled to refuse such subsequent improvement or delivery in accordance with § 439 Par. (3) BGB (German Civil Code), or should a delay, for which BAG electronics is responsible, occur in any subsequent improvement or delivery in excess of a reasonable term, or if such subsequent improvement or delivery is unsuccessful twice, Ordering Party shall be entitled, at its option, to withdraw from the contract or demand an appropriate abatement of the purchase price.

8. Ordering Party shall only have the statutory right to recourse against BAG electronics to the extent that legal requirements (e.g. for the sale of consumer goods) are fulfilled. Consequently there shall, in particular, be no right to recourse if Ordering Party has entered into any agreements with its customer above and beyond the statutory claims for defects within the scope of a guarantee or by way of fair dealing.

9. A warranty term of one year shall apply to the extent that the statutory provisions concerning the sale of consumer goods are not applicable, in particular with regard to liability upon recourse (in the absence of statutory provisions). Legally compulsory longer terms shall remain unaffected.

10. This shall not affect the legal consequences of any violation of the commercial duty to examine goods and the obligation to give notice of defects (in accordance with § 377 and § 378 HGB (German Commercial Code)).

11. Apart from that, Section XI shall apply to any claims for damages. Claims by Ordering Party against BAG electronics and its vicarious agents due to a defect of quality that are more extensive or different from those detailed in this Section and Section XI shall be excluded

## **XI. Compensation/Liability**

1. Claims for compensation for damages by Ordering Party shall be excluded, irrelevant of the legal grounds, in particular due to any breach of obligations arising from the contractual obligations and from tortious acts, unless there is compulsory liability in accordance with product liability laws, in cases of liability for intentional or grossly negligent conduct, due to injury to life, limb or health, or due to the violation of essential contractual obligations.

2. Claims for compensation for violation of essential contractual obligations shall, however, be limited to predictable damages typical for the contract, unless a limitation is excluded for other reasons due to intentional or grossly negligent conduct, and/or due to injury to life, limb or health.

3. In the event that Ordering Party's customer, or the customer's customer, justifiably has claims against Ordering Party for subsequent performance, the latter shall give BAG electronics the opportunity to carry out such subsequent performance itself within a reasonable term before procuring a "replacement" elsewhere. Ordering Party shall impose this obligation on its customer accordingly. In the event that Ordering Party violates these obligations, BAG electronics reserves the right to reduce compensation of expenses to an amount BAG electronics would have incurred by carrying out the subsequent performance itself. This shall not affect § 444 BGB (German Civil Code).

4. Compensation for expenses associated with such subsequent performance on the part of Ordering Party in respect of its customer are furthermore excluded if Ordering Party, contrary to its duty to limit damages, has not made use of its right to refuse this kind of subsequent performance, or both kinds of subsequent performance, because of the disproportionate nature of costs.

5. The expenditures required for verification and subsequent performance, in particular the costs of transport, travel, work and materials as well as the expenses for removal of the defective, and installation or mounting of the reworked or delivered faultless article shall be borne by BAG electronics if a defect actually exists. If the expenditures increase because the object of the delivery was subsequently brought to a location other than Ordering Party's place of business, Ordering Party shall bear the additional costs generated by this, unless the transfer corresponds to its intended use. This shall apply accordingly to Ordering Party liability upon recourse in accordance with § 445a [BGB (German Civil Code) - recourse of the seller to the supplier], if as the last contract in the supply chain is not a purchase of consumer goods.
6. Installation and removal costs shall be borne by BAG electronics only if the article was, in accordance with its type and intended use, installed in another article or attached to another article and if the defect that is causative for the assertion of the claims for subsequent performance is our responsibility. In particular referenced on XI. 4.
7. The statutes of limitation binding on these claims shall be applicable to any claims for damages and compensation in conjunction with the defectiveness of the goods (cf. X. 9.). The same statute of limitation shall apply to the Ordering Party right to recourse in accordance with § 445a BGB (German Civil Code), unless the last contract in the supply chain is a purchase of consumer goods.
8. A right of retention of Ordering Party for time-barred claims for defects shall not exist.

## **XII. Return Consignments**

1. Any return consignments of faultless goods shall require the prior written consent of BAG electronics. Return consignments shall only be accepted within 90 days of the date of shipment in their original packaging.
2. Special equipment, goods that are not in their original packaging, and products that are not (or no longer) included in the current product catalogue of BAG electronics at the time of return shall generally be excluded from return consignment.
3. The return consignment note shall contain the exact description of the goods as well as the date and number of the relevant (purchase) invoice or of the delivery note.
4. The return consignment to which BAG electronics has given its written consent shall be shipped to BAG electronics in Arnsberg (Germany) at the expense of Ordering Party.
5. Even in case of an authorised return consignment, BAG electronics shall only accept the returned goods against issuance of a credit note for the value of the goods, less processing costs. These costs shall be assessed at a lump-sum of 20% of the net value of the goods, but shall amount to at least EUR 50.00.

## **XIII. Miscellaneous**

1. BAG electronics reserves, without limitation, its rights of use and exploitation under ownership and copyright law to quotations, drawings and other documents (herein referred to as "Documents"). The Documents shall only be made accessible to third parties with the prior consent of BAG electronics and shall be returned to the latter immediately upon request if the contract is not awarded to BAG electronics. Sentences 1 and 2 above shall apply to Ordering Party's documents accordingly, although these may be made accessible to such third parties to which BAG electronics has legitimately assigned the deliveries.
2. The legal relationship in conjunction with this contract shall be governed by German substantive law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
3. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of BAG electronics GmbH, Arnsberg (Germany).

4. Should any provision in these Terms & Conditions or any provision in the context of other agreements be or become ineffective, this shall not affect the effectiveness of all the other provisions or agreements.
5. Unless something else results from the order confirmation, place of fulfilment for all services and considerations, including of payments, shall be the headquarters of BAG electronics.