

Terms and Conditions of Delivery and Payment of BETH Sondermaschinen GmbH

Section 1 Scope

BETH Sondermaschinen GmbH deliveries, services and offers are subject to these terms and conditions only. Notices to the contrary by the orderer in reference to their terms and conditions of business or of purchasing are hereby contradicted.

Section 2 Offers and contract inception

- Offers included in brochures, advertisements, etc. are subject to alteration at all times; this includes stated prices. Specific offers prepared by BETH Sondermaschinen GmbH are binding for 30 calendar days following the offer date.
- Ancillary agreements, amendments, additions and/or other deviations from these terms and conditions are only valid if BETH Sondermaschinen GmbH has agreed to them. Such agreements must also be concluded in writing.
- Information contained in offers and/or order confirmations submitted by BETH Sondermaschinen GmbH that is based on a clear inaccuracy such as a typographical error or mathematical error, do not result in any obligation on the part of the company. The information applies as it was intended to be understood.
- Offer documents, drawings, descriptions, samples and cost estimates submitted by BETH Sondermaschinen GmbH may not be disclosed, published, duplicated or otherwise made available to third parties without the permission of BETH Sondermaschinen GmbH. All information contained in offers is subject to strict confidentiality. Data, facts and specifications provided by BETH Sondermaschinen GmbH may only be used to review the offer. The documents must be returned on request and copies may not be retained.

Section 3 Prices, price changes

- Prices do not include VAT, which is usually listed separately, unless otherwise stated.
- Prices do not include packaging and shipping costs.
- If the period between contract inception and the agreed and/or actual delivery date is more than six months, the prices of BETH Sondermaschinen GmbH that apply at the time of delivery or provision apply. If these prices exceed the originally agreed terms and conditions by more than 10%, the orderer is permitted to withdraw from the contract.
- Overtime, overnight work and work on Sundays is invoiced separately at a surcharge in accordance with the Terms and Conditions of Assembly of BETH Sondermaschinen GmbH.
- Cost estimates for repair work will be prepared as accurately as possible but are non-binding in all cases.

Section 4 Delivery times

- Delivery dates or deadlines that can be agreed as binding, as well as planned dates must be agreed in writing. Binding delivery dates only apply on the basis of an explicit declaration in this regard by BETH Sondermaschinen GmbH.
- BETH Sondermaschinen GmbH is only responsible for delays to and/or the cancellation of its deliveries and services if they have been caused as a result of intentional acts or gross negligence on the part of BETH Sondermaschinen GmbH, its legal representatives or its vicarious agents. This applies in particular in the case of force majeure, strikes, lockouts, administrative orders, etc. or also in the case of impediments to suppliers of BETH Sondermaschinen GmbH or their sub-suppliers. All deliveries and services are subject to correct and prompt delivery on the part of BETH Sondermaschinen GmbH suppliers. The duration of a grace period to be granted by the orderer by law in the event of delayed performance is set at two weeks beginning on the date on which BETH Sondermaschinen GmbH receives notification of the grace period.

Section 5 Shipping and transfer of risk

- Risk is transferred to the orderer as soon as the shipment has been handed over to the person responsible for transportation or if the shipment has left the BETH Sondermaschinen GmbH factory to be sent to the orderer. If the orderer requests that the shipment be delayed or not carried out, risk is transferred to the orderer once it is notified that the shipment is ready to be sent.
- Deliveries can be insured at the orderer's request in its name and on its account.

Section 6 Warranty

- If the service rendered or delivery provided by BETH Sondermaschinen GmbH is defective and/or warranted characteristics are missing and/or defects arise within the warranty period due to production or material defects, BETH Sondermaschinen GmbH may supply a replacement or conduct repairs at its discretion and under the exclusion of all warranty claims on the part of the orderer. Multiple repairs are permitted if the orderer is an enterprise.
- The warranty obligation begins on the date of delivery or acceptance and, in the case of enterprises, lasts for a period of one year unless a longer warranty period is required by law. In the case of private consumers, repairs of used movable objects are subject to a warranty period of one year. Statutory regulations apply in all other cases.
- Clearly evident defects cannot be claimed following acceptance. Otherwise, in order for the orderer to assert warranty claims, BETH Sondermaschinen GmbH must be notified of such defects without undue delay or within two weeks of delivery at the latest. The defective items must be maintained in the condition in which the defects were determined so that they can be inspected by BETH Sondermaschinen GmbH. If the buyer does accept the delivery, the goods are considered to have been duly delivered once they leave the supplier or the warehouse.
- Insignificant and acceptable deviations in dimensions and design, particularly in the case of repeat orders, do not constitute grounds for complaint unless absolute compliance with defined dimensions and design has been explicitly agreed. Technical improvements and necessary technical changes are also considered as agreed provided they do not result in the usability of the item being impaired.
- If operating and maintenance instructions of BETH Sondermaschinen GmbH are not followed, changes are made to the products, parts are replaced or resources are used that do not comply with the original specifications, no warranty obligations apply if the orderer has not raised any objections to a substantiated claim that one of the above circumstances led to the defect.
- No liability is assumed for normal wear and tear.
- If repairs or the replacement delivery are not successful within an appropriate period of time, the orderer can request a reduction in the price or that the contract be rescinded.
- These terms do not apply to the sale of used items. These items are subject to a warranty period of one year. No warranty is granted for used items sold to enterprises.
- If BETH Sondermaschinen GmbH makes itself available to the orderer to provide information regarding the use of its product beyond the scope of its legal obligations, it is only liable pursuant to Section 7 if separate remuneration has been agreed.

Section 7 Limitation of liability

Claims for compensation for damages due to positive breach of contract, fault at contract inception and improper actions that do not represent breaches of a primary contractual obligation by the company may not be asserted against the company or against its vicarious agents unless the damages were caused as a result of an intentional act or gross negligence. This does not apply to claims for compensation for damages based on warranted characteristics that are aimed at protecting the orderer from the risk of consequential damages. This does not affect claims for compensation for damages under the German Product Liability Act (ProdHG) or liability for personal injury or death. BETH Sondermaschinen GmbH is entitled to compensation for damages of a suitable amount in the event of breaches of confidentiality obligations (see also Section 2 (4)). BETH Sondermaschinen GmbH is not liable for pecuniary damages due to defective performance. This also applies for costs arising due to production stoppages. Processing damages in the amount of EUR 50,000.00 are covered by BETH Sondermaschinen GmbH in relation to the assembly of production and assembly facilities. Facilities of a greater value must be insured separately by the orderer for the duration of the assembly work, unless otherwise contractually agreed.

Section 8 Retention of title

- BETH Sondermaschinen GmbH reserves the right of ownership to the delivered items until all claims attributable to BETH Sondermaschinen GmbH against the orderer on any legal basis have been settled (reserved items).
- The orderer is obliged to immediately notify BETH Sondermaschinen GmbH in writing of any seizure of reserved items of BETH Sondermaschinen GmbH and notify the pledgee of the retention of title. The orderer is not entitled to sell, gift, pledge or transfer as collateral any items delivered under retention of title, except in the following cases.

- If the delivery is made to a business operation maintained by the orderer, items may be sold on within the scope of ordinary business operations. In such a case, the orderer preemptively assigns its claims from the buyer on account of the sale to BETH Sondermaschinen GmbH. In the case of the sale of items on credit, the orderer must retain title on the items vis-à-vis the buyer. The orderer hereby assigns all rights and claims under this retention of title to BETH Sondermaschinen GmbH.
- Any processing work performed to the retained items by the orderer is considered to have taken place free of charge on behalf of BETH Sondermaschinen GmbH. In the event that the retained items are processed, combined, mixed or added to other goods not belonging to BETH Sondermaschinen GmbH, BETH Sondermaschinen GmbH is entitled to co-ownership of the produced goods in proportion to the volume of retained items compared to the other goods at the point of processing, combination, mixing or addition. If the orderer acquires sole ownership to new goods, the contractual parties hereby agree that the orderer will grant BETH Sondermaschinen GmbH co-ownership of the new goods in proportion to the volume of processed, combined, mixed or added retained items and store the new goods free of charge on behalf of the supplier. If the retained items are sold on, be it together with other goods and regardless of whether the retained items have been processed, combined, mixed or added, the advance assignment agreed in No. 3 only applies in the amount of the share of the retained items compared to the other goods that have been sold on.
- If retained items are installed by the orderer or on its behalf as a key component on third-party land, the orderer assigns all outstanding claims to remuneration with all ancillary rights, including granting a security mortgage, vis-à-vis the third party or the party concerned to BETH Sondermaschinen GmbH.
- If retained items are installed as key components on the orderer's land, the orderer assigns all claims arising from the sale of the land or of land rights, together with all ancillary rights, to BETH Sondermaschinen GmbH.
- If the value of the sureties provided according to the terms and conditions of above to BETH Sondermaschinen GmbH exceeds the value of the claims of BETH Sondermaschinen GmbH – not only temporarily – by over 20%, BETH Sondermaschinen GmbH is obliged to release securities at its discretion on the request of the orderer.
- If the orderer fails to meet its obligations to BETH Sondermaschinen GmbH on time or at all and/or improperly influences items delivered under retention of title, BETH Sondermaschinen GmbH can demand the retained items without prejudice to claims for performance of the contract attributable to it, insofar as an appropriate grace period granted to the orderer to meet its obligations has lapsed without resolution. If the orderer has performed the contract, BETH Sondermaschinen GmbH must return the items. This clause does not apply to hire-purchase business, which is subject to the German Consumer Loan Act (VerbrKrG).

Section 9 Payment

- Invoices are due for immediate payment without deduction, unless otherwise agreed. In the case of deliveries with a total value of less than EUR 500.00, BETH Sondermaschinen GmbH can also deliver against cash on delivery plus shipping and packaging.
- BETH Sondermaschinen GmbH reserves the right to refuse checks and bills of exchange. Checks and bills of exchange are only accepted as a conditional payment. Discount charges and exchange charges are borne by the orderer and are due immediately.
- If BETH Sondermaschinen GmbH becomes aware of circumstances that cast doubt on the creditworthiness of the orderer, or, in particular, if it does not redeem a check or stops making payments, BETH Sondermaschinen GmbH is entitled to invoice for the entire remaining amount even if it has accepted checks. In addition, BETH Sondermaschinen GmbH is entitled in such cases to request advance payments or sureties.
- If the orderer ceases payments and/or if an application is made to initiate insolvency proceedings over its assets or judicial or extrajudicial insolvency proceedings, BETH Sondermaschinen GmbH is also entitled to withdraw from the non-fulfilled part of the contract.
- BETH Sondermaschinen GmbH is entitled to attribute payments to older debts in spite of any instructions otherwise issued by the orderer. BETH Sondermaschinen GmbH will inform the orderer about how payments are attributed. If costs and interest have arisen, BETH Sondermaschinen GmbH is entitled to attribute payments to costs initially, then to interest and finally to the main performance.
- If the orderer defaults on payment, BETH Sondermaschinen GmbH is entitled to charge interest on arrears of 5% on the base rate of the European Central Bank. This does not affect the company's right to claim and further delay damages. In such cases, the orderer is at liberty to provide evidence of damages of a lower amount, which is then considered to be the relevant amount.
- The orderer is not permitted to offset any claims unless said claims are legally determined counterclaims not under dispute by BETH Sondermaschinen GmbH.

Section 10 Applicable law, place of jurisdiction, partial invalidity

- These terms and conditions and the entire legal relationship between BETH Sondermaschinen GmbH and the orderer are subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- If the orderer is a merchant as defined in the German Commercial Code (HGB), a legal person under public law or a public law entity with a special public fund, the registered place of business of BETH Sondermaschinen GmbH is the sole place of jurisdiction for all disputes directly or indirectly resulting from this contractual relationship.
- If any provision in these terms and conditions is or becomes invalid, this does not affect the validity of any other provisions and agreements between BETH Sondermaschinen GmbH and the orderer.

Last revised July 2012 BETH Sondermaschinen GmbH, D-59964 Medebach, Germany