

§ 1 General Provisions, Offer and Scope of Delivery, Formation of Contracts

- 1.1. Sale and delivery of hardware products and licensing and delivery of software products shall be exclusively subject to the present General Terms and Conditions of Delivery. Any deviating purchase conditions of customer shall be valid only upon our written confirmation. The special terms provided in our General Terms and Conditions of Delivery shall apply to non-merchants. The following General Terms and Conditions of Delivery shall not be applicable to end users.
- 1.2. Written offers by customer shall always be subject to change without notice, unless otherwise agreed in writing. Documents included in the offer such as illustrations, drawings, weights, measurements and performance figures shall be approximate only, unless expressly determined as binding. Initial offers shall as a rule be free of charge. For any further offers including layout designs we may charge compensation for our expenses, unless a valid delivery contract is concluded. Otherwise all price lists and other advertising material of bullmer shall be subject to change without notice and without engagement. Supply contracts shall be formed only upon our written confirmation of order, determining the scope of obligations assumed by bullmer. Our Terms and Conditions shall be deemed accepted the latest upon acceptance of the goods. The content of our confirmation of order shall be deemed accepted, unless objected against by customer within eight calendar days.
- 1.3. Changes are free of charge for maximum 2 weeks after signed order confirmation. After that period any change will be charged with costs depending on our effort. This may also result in a delay in shipment.
- 1.4. In commercially organized business dealings our Terms and Conditions shall also apply with respect to any future transactions with customer, even if not expressly stipulated anew.
- 1.5. The customer agrees with bullmer to publish a press release, containing the fact of the sale of the machine, the products manufactured and the materials processed with it, after prior approval.

§ 2 Prices, Packaging, Shipment

- 2.1. Prices and license fees shall be ex warehouse bullmer headquarters plus packaging, freight, insurance, VAT and clearance charges or turnover tax on imports, if any, as well as other legal charges in the amount applicable from time to time, unless otherwise agreed upon in writing.
- 2.2. Installation and training cost shall be included only if expressly agreed upon in writing. Shipment shall be effected ex works Mehrstetten upon the risk and expense of Consignee.

§ 3 Terms of Payment

- 3.1. The following terms of payment shall apply, unless otherwise agreed upon in writing:
 - 3.1.1. At a total price (excluding VAT) of up to EUR 10.000,- the invoice amount shall be due for payment without any deduction within ten (10) days after invoicing.
 - 3.1.2. At a contract value exceeding EUR 10.000,- we shall be entitled to invoice 40% of the total price on confirmation of order, 50% on advice of readiness to deliver and 10% upon setup of the equipments. Invoices shall be due for payment without any deduction within thirty (30) days. bullmer does not pay any interest on down payments. For bills of exchange, acceptance of which is hereby reserved, and which are just as well as checks accepted on account of payment only, discount shall be immediately payable by customer in cash or by bank remittance. We do not assume any warranty for timely collection of any checks or bills of exchange.
- 3.2. If customer fails to observe the deadlines granted for payment, interest in the amount of 8% p.a. above the respective basic interest rate of the European Central Bank shall be charged on the outstanding purchase price as of maturity, without any reminder being necessary.
- 3.3. Retention of payments or set-off against any counterclaims of customer contested by us shall be excluded.

- 3.4. If payment by instalments has been agreed and customer is in arrears with an instalment for more than one week the outstanding remainder shall be due for payment immediately.
- 3.5. bullmer shall be entitled, in deviation of the agreed terms of payment, to effect deliveries only against cash in advance, if on objective consideration of the situation it is to be expected that customer's financial circumstances have substantially deteriorated since the conclusion of contract, in particular if customer does not pay debts due to bullmer, so that bullmer's claims appear to be jeopardized. In such a case bullmer may stay any further performance until all claims due under the contract relationship or under any economically related contracts or letters of understanding have been paid by customer in cash or sufficient security has been provided. If customer does not comply with bullmer's request within a reasonable period of time, bullmer shall be entitled to dispose of the delivery item elsewhere and charge minimum damages of 20% of the agreed purchase price, notwithstanding any other rights available.

§ 4 Delivery

- 4.1. Delivery periods shall be approximate only, in particular with respect to special designs.
- 4.2. Partial deliveries shall be admissible and may be invoiced separately, unless they are not reasonably serviceable.
- 4.3. Delivery periods shall be binding only if set forth in a written confirmation of order by bullmer.
- 4.4. In the case of default in delivery on our part or impossibility of performance we shall be held liable for claims for damages whatsoever only in accordance with § 15 of the present Terms and Conditions. customer shall be obliged to declare within a reasonable period of time, upon request of bullmer, if he rescinds the contract because of default of delivery and/or claims damages or insists on delivery.
- 4.5. We shall be exempted from keeping within the agreed delivery period if the delivery contract is subsequently changed in type and scope of delivery. If customer is in default with payment for an earlier delivery, we shall be entitled to retain deliveries. Observation of delivery periods shall be conditional upon customer's performance of his contractual obligations.
- 4.6. Delivery and performance periods shall be reasonably extended for bullmer in the case of breakdowns or disturbances due to Acts of God and other obstacles for which bullmer may not be held liable – such as irregularities in own deliveries, strikes, lock-outs, breakdowns etc. – which have a considerable impact on delivery and performance by bullmer. If by reason of such disturbances delivery or performance by bullmer should become permanently impossible or unreasonable, bullmer shall be released from its obligation to perform for good.
- 4.7. Acceptance within the set period shall be an essential contractual duty of customer. If customer is in default in acceptance, bullmer shall be entitled to demand payments in accordance with § 3 above.

§ 5 Shifting of Delivery

- 5.1. If shipment is delayed upon request of customer, he shall be charged for costs accruing for the storing at our plant, at least, however, 1% of the invoice amount per month. After expiration of a period of one month set by us, we shall be entitled to dispose elsewhere of the delivery item and deliver to customer at a reasonable new deadline determined depending on our operating capacity.

§ 6 Installation

- bullmer or a third party engaged by bullmer shall set up the delivery item ready-to-operate at customer's premises in the country where his plant is located, provided setup of installation has been agreed to be included in the price (Sect. 2.2) or has been separately ordered by customer. The customer agrees to make available one mechanic and one electrician for support of the installation process.
- 6.2. Setup shall be conditional upon
 - customer providing and preparing a site according to the installation instructions of bullmer
 - customer organising at his cost the in-house transport to the installation site

unpacking and setup being effected only upon the instruction of bullmer

the delivery item not being altered, misused or exposed to extraordinary stress by customer prior to setup

- 6.3. Operability of the delivery item set up shall be evidenced by a successful performance test, according to the test procedures and test programs prepared by bullmer, and be recognized by customer by countersigning the acceptance protocol. For software supplies and performances the performance test shall be deemed successful if, after a reasonable period of time, the essential functions of the software are operating according to contract data. In such a case customer shall declare acceptance in writing to bullmer without any delay. If customer fails to sign the acceptance protocol in spite of a successful performance test, operability shall nevertheless be deemed recognized at the date of the performance test, even if customer, after bullmer has granted a grace period and indicated the consequences of the expiration of the grace period, does not declare acceptance within such period.
- 6.4. bullmer does not assume any obligation for connecting the delivery item to customer's equipment from other manufacturers.

§ 7 Retention of Title

- 7.1. bullmer reserves ownership in the delivered goods until full payment of the claims resulting from the contract relationship and any other claims existing against customer at the time of the conclusion of contract (hereinafter "reserved goods").
- 7.2. customer may install and transform the reserved goods in the ordinary course of his business. However, such amalgamation, commingling, processing or transformation of the reserved goods shall be effected exclusively on behalf of bullmer. bullmer shall acquire a co-ownership share in the finished goods and in the new device at the ratio the value of the reserved goods bears to the value of the finished goods or the new device.
- 7.3. customer shall be entitled to resell the reserved goods or the goods in co-ownership of bullmer in the ordinary course of his business by reserving title in the goods. Until full payment of any and all claims mentioned in above customer hereby assigns his future claims from such resale of the reserved goods up to the amount of the respective invoice value of the reserved goods as security to bullmer, the latter hereby accepts such assignment. If bullmer merely has a co-ownership share in the resold goods the claims shall be assigned, up to the amount of the marketable value of such share, however, ranking prior to any other claims. On request of bullmer customer shall communicate to bullmer name and address of the purchaser concerned, as well as type and scope of his claims against such purchaser. In order to secure its claims for payment bullmer shall be entitled to disclose such assignment at any time. Pledging or transfer of ownership of the reserved goods by way of security shall be prohibited.
- 7.4. In the case of any seizure of the reserved goods by third parties customer shall disclose the ownership of bullmer and inform bullmer immediately in writing. customer shall bear any and all cost and expenses of an intervention procedure and other defensive measures in connection with such a third party seizure.
- In the case of a breach of contract by customer - in particular default in payment - or occurrence of facts by reason of which a suspension of payments may be expected, bullmer may revoke customer's right to reselling, collecting claims and processing or amalgamating the reserved goods and may retake the reserved goods at customer's expense or demand assignment of customer's right against third parties to recover possession. Repurchase or pledging of the reserved goods by bullmer shall not be deemed rescission of contract. bullmer shall be entitled to realize the reserved goods and seek satisfaction by offsetting the outstanding claims vis-à-vis customer against the proceeds.
- On request of customer bullmer shall release any security to the extent its value should exceed the secured claims by more than 10% in total.
- 7.7. To the extent bullmer is entitled to exercise the retention of title customer shall irrevocably and unrestrictedly give bullmer access to his business premises or plant site, respectively, for the

purpose of collecting the reserved goods at ordinary business hours.

§ 8 Warranty for Hardware Products

- 8.1. bullmer warrants that the delivered hardware products, at the time of the passing of risk, are free from material and manufacturing defects substantially reducing the value or the fitness of the goods, and that they have the quality expressly warranted in writing. bullmer does not assume any warranty for resaleability of the products or fitness for a specific purpose. Technical data, specifications or quality descriptions made available by bullmer shall not be deemed warranties, unless they have been expressly confirmed by bullmer in writing.
- 8.2. In a warranty case bullmer may, at its option, repair or replace the defective goods. In the case of increased expenses because the hardware products after delivery have been moved to a place other than the agreed delivery place, and if this is contrary to the contractual use, any additional costs shall be borne by customer. bullmer shall first always be given an opportunity of substitute performance within a reasonable period of time. If substitute performance fails, Purchaser may - notwithstanding any other claims for damages - rescind the contract or reduce payment. Replaced parts shall pass into the ownership of bullmer.
- 8.3. Unless otherwise agreed, there shall be a 12 months warranty period as of acceptance of the system, provided this has been installed by bullmer, otherwise the warranty period shall run as of delivery. The above provisions shall not apply if the law provides for longer periods under §§ 438 par.1 No.2 (structures and parts for structures), 479 par. 1 (right of recourse) and 634 a (building defects) BGB (German Civil Code).
- 8.4. For replacements and repair the period of prescription for defects in quality shall be 6 months. It shall run, however, at least until expiration of the initial prescription period for warranty of quality claims for the delivery item. The period for warranty of quality for the delivery item shall be extended by the duration of the interruption caused by the repair works.
- 8.5. At the option of bullmer warranty works shall be executed either at customer's site or at a bullmer service center.
- 8.6. Assignment of the warranty claims by customer shall be excluded.
- 8.7. Otherwise claims for damages shall be governed by § 15. Any further reaching or other warranty claims whatsoever shall be excluded.
- 8.8. If, at the request of customer, a system is not set up by bullmer customer shall be obliged, in a warranty case, to furnish evidence of the proper setup.
- 8.9. The equipment and systems delivered by bullmer shall be operated by trained staff only. For this purpose bullmer shall make available training possibilities. Contractually agreed training shall be carried out within one year after acceptance of the system.

Warranty shall be excluded if the product is improperly installed, maintained, repaired, operated, altered by customer or by third parties not engaged by bullmer or exposed to environmental conditions not in line with bullmer's installation requirements, or in case of opening the vacuum unit or other fixed units, unless customer furnishes proof that such circumstances have not caused the defect concerned. Warranty shall also be excluded in case of alteration or removal of the original technical logo or alternation of the installation site without the written consent of bullmer, unless customer furnishes proof that such circumstances have not caused the defect concerned.

If it is established by a review of a notice of defects that there is no warranty case, the costs for such review and the repair shall be charged at the bullmer's service prices and conditions applicable from time to time.

A warranted characteristic of machines and equipment supplied by bullmer is the ability to exclusively handle material tested by bullmer under the existing environmental testing conditions and confirmed to the customer in written form. There is no claim for the ability to handle any material which was not tested by bullmer.

§ 9 Software License

- 9.1. customer may use bullmer software products, including documentation, only subject to a software licence granted by bullmer.

A software licence contract shall be concluded by confirmation of order or timely acceptance of bullmer's offer.

- 9.2. A software licence granted by bullmer may be assigned only upon prior consent by bullmer and shall not entitle to grant sub-licenses. Software may be copied, reproduced or transferred via a computer network to another system only to the extent necessary for operation and for archiving and backup purposes. To the extent the data carrier delivered to customer should, for technical reasons, include software not covered by the license, such software may be used only under a special licence. The software and/or the equipment may provide technical precautions to prevent access to such unlicensed software.
- 9.3. customer may alter software or combine it with other software exclusively for operation in machine-readable form. Even as part of such adaptations the licensed software shall remain subject to the present Terms and Conditions.
- 9.4. customer shall be entitled to make copies of the delivered program and the related documentation for archiving and back-up purposes. customer shall attach the bullmer copyright notice and any other notices of industrial property rights of bullmer and its in-suppliers on all complete or partial copies, adaptations or transfers of software in the same way as on the original version of the licensed software.
- 9.5. customer shall not grant any sub-licenses or make the software available to third parties not even by making the own equipment available to third parties or by processing or storing third party data. There shall be excepted Customer's employees and agents as well as third parties who have recognized as binding for themselves, their employees and agents, the provisions of the software license agreement with customer by signing a separate agreement with bullmer in the scope necessary for exercising such transferred right of use.
- 9.6. customer shall treat confidential any and all information on the software, the applied methods and the procedures. customer shall not apply any procedures whatsoever in order to restore source programs or parts thereof from the binary software or in order to acquire knowledge about the conception or the generation of such software or hardware or firm ware implementations of the software, respectively. customer shall instruct any and all employees having access to the software program about the duties and obligations under the present Agreement.
- 9.7. Software licenses shall be granted for an indefinite period of time and may be terminated by bullmer only for an important reason. An important reason shall be deemed in particular if customer does not comply with his contract obligations in spite of a warning notice and does not make payments due within ten (10) days after receipt of a dunning letter.
- 9.8. Upon termination of the software license agreement customer shall return to bullmer the licence certificates, and destroy any and all software versions made available, even if they have become part of any adaptations, and give written confirmation thereof to bullmer.
- 9.9. A software licence granted by bullmer shall give the right to use any and all new software versions created in the course of further developments for a period of twelve (12) months after installation of the equipment. Any subsequent software editions shall be governed by a software maintenance agreement. On importing new software customer shall make sure that any necessary changes in the equipment (hardware) are carried out at his cost, after prior disclosure of the manufacturer by bullmer or by respectively skilled third parties. Expenses in connection with shipment and importing of software versions shall be borne by customer.
- 9.10. If bullmer accepts a written request by customer for grant of a software licence without data carrier customer shall hereby become entitled to copy, transfer and use an already licensed and delivered version of the software for another licensed equipment for the purpose of operation on the equipment licensed in the above mentioned request.
- 9.11. Source codes released for licensing by bullmer may be made available to customer only by reason of a separate source code software license agreement.

§ 10 Third Party Software

- 10.1. Software products from third party companies included as such in bullmer's price and product list („third party software“) shall be permitted to be used by customer on the basis of the terms and conditions of such third party companies, unless otherwise agreed in writing.

§ 11 Warranty for Software Products

- 11.1. bullmer represents and warrants that the licensed software products of bullmer and its in-suppliers comply with the essential functions and user facilities in the product description (software product description) for the respective software products at the time of the grant of the license. If the software description is in a foreign language customer shall receive German-language explanations on request. The technical data, specifications and performance descriptions shall not be deemed representations or warranties, unless they are expressly confirmed as such by bullmer. bullmer does not assume any warranty for re-saleability of the products or fitness for a specific purpose.
- 11.2. In the case that certain functions or user facilities in the product description are not fulfilled, i.e. in the case of reproducible program errors, essentially reducing the value or the fitness of the product, bullmer shall, at its option, remedy the defect by repair or replacement.
- 11.3. bullmer does not assume any warranty for third party software connected with the operation of bullmer software products, e.g. operating systems, networks, etc.)
There shall be no warranty for software copies not delivered by bullmer or software copies not in compliance with Sect. 9 above or for software applied on a computer system without the minimum hardware configuration and software facilities according to the product description.
Breakdowns which are not caused by the hardware or software supplied by bullmer are not covered by the bullmer warranty. The cost of activities by bullmer as well as costs for the repair of such malfunction must be covered by the customer.
The customer ensures bullmer full remote access to systems running under bullmer software for defect analysis and troubleshooting. The cost of activities by bullmer due to missing system remote control access rights must be covered by the customer.
- 11.6. In all other respects the provisions in Sect. 8.2 through 8.12 shall apply mutatis mutandis.

§ 12 Proprietary Rights of bullmer

- 12.1. Upon purchase or acquisition of a license for bullmer products customer shall not obtain the right to combine or commingle bullmer products, journals or system architectures with other products if such combination or commingling should violate a patent or patent application of bullmer, unless
bullmer has granted customer an express license for such other product or
the other product is directly or indirectly marketed by bullmer or
the other product is directly or indirectly marketed by a licensee of bullmer and such license covers the right to resale and/or grant of sub-licenses.

§ 13 Export / Re-Export

- 13.1. Any and all deliveries and other services of bullmer shall be subject to the grant of an export permit by the German Bundesamt für Außenwirtschaft (Federal Office for Foreign Trade) or the competent authority of another country of origin. Irrespective of whether or not customer informs bullmer about the final place of destination of the products and/or the technical data (software and technical information, whatsoever) delivered by bullmer, it is the responsibility of customer to obtain the necessary permits and authorizations from the competent authorities before exporting such products, technical data or systems, respectively, out of the country into which the products are delivered under the present agreement.

§ 14 Testing and Maintenance Accessories

- 14.1. Diagnostic software, documentation, equipment and other materials required by bullmer for the purpose of setup, execution of warranty works or services, may be delivered together with bullmer products and shall be stored on request of bullmer at customer's premises. However, they shall remain the exclusive property of bullmer.
- 14.2. customer shall be responsible for the proper storage and shall not use the testing and maintenance accessories or make them available to third parties without the prior written consent of bullmer.

§ 15 Limitation of Liability

- 15.1. Claims for damages by customer for any legal reason whatsoever, in particular for violation of duties under the obligatory relation and for tortious acts shall be excluded. This shall not apply if there is a mandatory liability, e.g. under the product liability law, in the case of intent, gross negligence, injury to life, body, freedom or health, for warranty of absence of a defect or violation of contractual obligations. Damages for violation of material contract obligations, however, shall be limited to typically foreseeable damage, unless there is intent or gross negligence or liability for injury to life, body, freedom or health or if there is a liability for warranty of absence of a defect. The above provisions shall not imply a shifting of the burden of proof to the disadvantage of customer.
- 15.2. bullmer shall not be held liable for loss of any user data.
- 15.3. To the extent claims for damages are excluded or restricted under the above paragraphs, such exclusion or restriction shall also cover claims for tortious acts and claims against employees and agents of bullmer.
- 15.4. bullmer shall indemnify customer from third party claims for violation of industrial property rights or copyrights by the delivered goods in any countries of the European Union, Japan and USA, as well as in countries where customer is utilizing hardware or software. bullmer shall assume cost of customer imposed upon him by court judgment or by compromise settlement and damages provided that customer informs bullmer immediately in writing about such claims; customer does not make any concessions or statements which might have an disadvantageous effect in any court proceedings; customer allows bullmer to assume sole control over any and all procedural acts, the conduct of the proceedings and settlement thereof; customer, upon request of bullmer, makes available to bullmer his best possible support. bullmer shall not be obliged to such indemnification if the hardware or software should contain parts which have not been or are not developed by bullmer.
- 15.4. The customer bears the risk regarding any obstruction or impediment of the purchased object. The bullmer warranty obligation will become void if the customer or unauthorized third party installs, operates, maintains or repairs incorrectly the item in question, or does not maintain the environmental conditions required as specified by the manufacturer. The customer is at liberty to provide verification that these conditions were not pertinent to the defective product. In addition, the software warranty will become void if the customer modifies the original identification and product characteristics.

§ 16 Product Modification

bullmer reserves the right to product modification not jeopardizing operability thereof.

§ 17 Miscellaneous

- 17.1. Assignment of rights and claims under the present Agreement shall require the prior written consent of the other Contracting Party. This shall not apply to the assignment of purchase price or license fee claims.
- 17.2. If customer passes on bullmer products to third parties he shall keep accounts thereon and give information thereon to bullmer on request of the latter, in order to enable bullmer, to eventually give the recipient important information on the product or the product safety.
- 17.3. Product Description (software description) and the provisions contained in the bullmer price and product lists referring to products which are the subject-matter of the present Contract,

shall be deemed a constituent part of the present Terms and Conditions and shall be submitted to customer on request.

- 17.4. The present Agreement shall substitute any and all earlier agreements between the Parties on the same subject-matter. Any changes and amendments to the present Agreement shall be valid only if executed in writing. The same shall apply with respect to the waiver of the written form requirement.
- 17.5. If any of the provisions of the present Agreement should be invalid, this shall not affect the validity of the remaining provisions hereof. To the extent the present Agreement should become invalid in whole or in part, or in the case of a contractual gap, the contents of the Agreement shall be governed by the statutory provisions. In the place of the invalid or missing provision a provision shall be deemed agreed which comes nearest to the economic purposes intended by the Contracting Parties.
- 17.6. Non-exercise of any rights by bullmer under the present provisions shall not be deemed waiver of claiming of such rights in the future.
- 17.7. The present Agreement shall be governed and construed exclusively in accordance with the laws of the Federal Republic of Germany.
- 17.8. If customer is a fully qualified merchant, a legal person under public law or a Federal Special Fund (öffentlich-rechtliches Sondervermögen) the exclusive place of jurisdiction for any litigation arising under or in connection with the present Agreement shall be at the registered office of bullmer. However, bullmer shall be entitled to bring action or commence legal proceedings at the place of general jurisdiction or the registered office of customer.

If customer comes under the personal area of the Data Protection Law he hereby consents to the processing of his data to the extent necessary for the purposes of the present Agreement

§ 18 Waste Disposal Electrical and Electronic Equipment (WEEE)

- 18.1. The directive 2002/96/EC of the European Parliament and of the Council regarding the treatment of WEEE is under ongoing implementation in the different european member states. It's objectives are to avoid uncontrolled disposal of WEEE and environmental damages. Independant of the national implementation into according laws the customer agrees with the following regulations.
- 18.2. The customer is responsible for an orderly disposal of defective or no longer used hardware components following the national regulations and laws of his country. Resulting expenses will have to be born by the customer. The customer particularly releases the supplier from any legal obligation of taking back defective or no longer used hardware components.
- 18.3. So far no longer used hardware components are sold by the customer he will oblige the buyer to release the supplier accordingly.