

Terms and Conditions of Sale, Delivery and Payment

§ 1 General Information – Scope of Application

1. Our deliveries, services and offers are based exclusively on these general terms and conditions of delivery, service and payment (“General Terms and Conditions”). We do not recognise the validity of terms and conditions of the customer that contradict or deviate from our General Terms and Conditions, unless we have issued express written consent to their application. Our General Terms and Conditions also apply in the event that we deliver to the customer without reservation even if we are aware that the customer’s terms and conditions contradict or deviate from our General Terms and Conditions.
2. If a provision of these General Terms and Conditions or a provision agreed upon in the context of other agreements is or becomes invalid, the validity of all other provisions or agreements shall remain unaffected.
3. Our General Terms and Conditions only apply to entrepreneurs (Section 14 German Civil Code [BGB]), legal entities under public law and special funds under public law.

§ 2 Contract Conclusion, Documentation

1. Our offers are always non-binding and subject to change, unless expressly marked as binding. The order placed by the customer is considered as a binding offer of contract. Unless otherwise provided for in the order, we are entitled to accept this offer of contract within two (2) weeks after receiving the offer. Within the context of electronic legal transactions, the confirmation of receipt of the order does not yet constitute the binding declaration of acceptance of the offer of contract, unless acceptance is expressly declared in the confirmation of receipt.
2. Unless otherwise agreed, we reserve the right to make customary deviations in shape, colour and weight to a reasonable extent after the contract has been concluded.
3. We reserve ownership rights to and copyright on all documents, cost estimates, drawings, illustrations, designs and samples. The customer is not authorised to disclose these to third parties without our express prior approval. At our request, the customer must return these items and documents to us in full and, if necessary, destroy any copies made if they are no longer required by the customer for the proper course of business operations or if negotiations do not result in the conclusion of a contract.

§ 3 Prices, Terms of Payment

1. Unless otherwise provided for in the order confirmation, our prices shall be EXW (according to Incoterms 2010 or the respective valid version) in Euro from our factory in Verl, including packaging. The statutory value-added tax is not included in our prices and will be stated separately on the invoice in the legal amount valid on the invoicing date.
2. Unless otherwise agreed, our invoices become due for payment 14 days after the invoicing date. A discount deduction is permissible only if a separate written agreement is concluded in advance between us and the customer.
3. Bills of exchange are accepted only if they can be discounted and only in lieu of payment. The customer bears the costs of discounting.
4. Irrespective of contrary provisions of the customer, we are entitled to offset payments first to customer’s older debts, any costs and interest incurred, and finally to the principal claim.

Our deliveries, services and offers are exclusively made on the basis of our terms and conditions. (AGBI. These can also be viewed and downloaded at www.bock.net/agb.)

5. Payments shall only become effective if we are able to dispose over the amount. In the event of payment by means of securities, which is subject to acceptance on an individual basis, payment is considered effected only when the security has been redeemed. The customer bears the associated costs and expenses.
6. In case of payment default by the customer, we charge interest of 8 % over the base interest rate, unless a different interest rate has been agreed upon. We reserve the right to assert further claims for damage caused by the payment default.
7. The customer is not entitled to withhold payments based on counterclaims arising from other contractual relationships or to offset payments against such counterclaims, unless these are acknowledged, undisputed or have been determined finally and absolutely by a court.

§ 4 Delivery Period and Delayed Delivery

1. Unless expressly agreed otherwise, the indicated delivery times are approximate only. The delivery period only starts when all technical questions have been clarified and the customer has fulfilled all due obligations properly and in due time; this particularly applies to the documents, permits and approvals to be provided by the customer.
2. If we are in default, we are liable for damages only to the extent regulated in § 7 of these General Terms and Conditions.
3. If we are prevented from delivering on time due to force majeure, labour disputes for which we are not responsible, civil unrest, official measures or other disturbances in the business operations of us or our suppliers/subcontractors for which we are not responsible and which can be proved to have a significant impact, the delivery period is extended appropriately. If delivery becomes impossible as a result thereof, our obligation to deliver becomes null and void to the exclusion of claims for damages. If the customer proves that subsequent performance following the delay is of no interest, the customer is entitled to withdraw from the contract under exclusion of any further claims. If the impediment lasts longer than three months, each contractual party is entitled to rescind the contract with regard to the part of the contract not yet fulfilled. We have to inform the other party immediately of the occurrence of force majeure or another impediment within the meaning specified above.
4. This shall apply accordingly if and to the extent that we have entered into a covering transaction before the conclusion of the contract with the customer, that would have enabled us to fulfil our contractual delivery obligations to the customer if it had been executed properly, and if the delivery from our suppliers to us was not performed, was incorrect and/or not in due time with no fault on our part.

§ 5 Shipping, Transfer of Risk, Costs of Freight

1. Unless otherwise provided for in the order confirmation, it is agreed that delivery is EXW (according to Incoterms 2010 or the respective valid version) from our factory in Verl.
2. If it has been agreed that the goods are to be shipped, the risk of accidental loss or damage of the goods – even if carriage paid has been agreed – is transferred to the customer as soon as the goods are handed over to the carrier or freight forwarder or the person selected to perform shipping. This also applies to transport with our vehicles or suppliers' vehicles. If the delivery or transfer is delayed for reasons caused by the customer, the risk is transferred to the customer on the day that the goods are ready for shipment and we have informed the customer of this fact.
3. If shipping has been agreed the customer shall pay the freight costs without deduction in advance unless otherwise agreed.
4. If the customer is in default of acceptance or the delivery is delayed for reasons caused by the customer, we are entitled to claim compensation for the damages incurred, including additional expenses. In these cases, we will store the products at the customer's risk and invoice the customer for the storage. We are entitled to charge a lump-sum of 0.5 % of the net contractual price per week started, but no more than 5 % of the net contractual price in total, for the storage costs incurred. The customer retains the right to proof that we did not incur any damages or that the damages incurred were less significant than the above-stated lump sum.

5. We are entitled to make partial deliveries, provided that this is reasonable acceptable for the customer taking the customer's interests into account.

§ 6 Warranty

1. If acceptance (*Abnahme*) is agreed to take place, it shall be performed exclusively at our manufacturing plant in Verl, unless otherwise agreed.
2. With regard to the customer's rights in the event of material and legal defects (including incorrect delivery and shortfalls in delivery), the statutory provisions apply unless otherwise stipulated below. In all cases, the statutory special requirements on the final delivery of goods to a consumer remain unaffected (Sections 478, 479 German Civil Code [BGB]).
3. Only our product description and that of the manufacturer of the electronic parts installed, particularly the drive motors, shall be deemed agreed with regard to the condition of the goods, but not, however, any public statements, claims or advertisements.
4. If we have to perform our services according to the customer's drawings, specifications, samples, requirements, etc., the customer bears the risk related to suitability for the intended purpose. If the customer's plans include requirements that we view critically from a production or structural stance, or that we view as not technically feasible, we shall inform the customer of this and provide a counterproposal.
5. The customer's claims for defects exist only if the customer properly fulfills its duties of inspection and complaint according to Section 377 German Commercial Code (HGB). If the contractual relationship between us and the customer is based on a contract for work and services (*Werkvertrag*), Section 377 German Commercial Code (HGB) shall apply respectively.
6. If acceptance (*Abnahme*) or the inspection of initial samples was agreed with the customer, complaints regarding defects are excluded for defects that the customer could have identified during careful acceptance or the inspection of initial samples.
7. We must be granted the opportunity to inspect the reported defect on site. If unauthorised modifications or improper maintenance work is performed by the customer or a third party, claims for these and for the resulting consequences do not exist.
8. If the delivered item or the manufactured work is defective, the customer is entitled to the statutory rights according to the following:
 - (i) We are initially entitled to remedy the defect or to deliver a non-defective item to the customer at our discretion, or, in the case of a contract for work and services (*Werkvertrag*), to manufacture a new work (supplementary performance). The customer must grant us the time required and the opportunity to conduct supplementary performance. We are obliged to bear all required costs related to the supplementary performance, in particular transportation, travel, labour and material costs. If it is identified that the customer was not entitled to claim remedy of a defect, we are entitled to claim reimbursement of the costs incurred in this context. Supplementary performance includes neither the removal of the defective item nor the renewed installation if we were not obligated to install the item originally. In the event of replacement delivery or new production in the case of contracts for work and services (*Werkvertrag*), the customer must return the defective item to us upon request. We are entitled to make supplementary performance contingent on the customer's payment of the agreed price for the delivered item; however, the customer is entitled to withhold an appropriate amount of the total price.
 - (ii) If supplementary performance is unsuccessful, the customer is entitled to withdraw from the agreement or to request a reduction in the agreed price at his or her discretion. In the event of an insignificant defect, there is no right of withdrawal.
 - (iii) The customer's claims for damages or reimbursement of expenses incurred in vain only exist according to § 7 of these General Terms and Conditions and are excluded in all other cases.
9. Limitation periods are governed by § 8 of these General Terms and Conditions.
10. Warranty claims may only be asserted against us by our direct contractual partner and may not be assigned.

§ 7 Liability Limitations

1. Subject to the provisions in para. 2, we are liable for damages – in the event of contractual, non-contractual or other claims for damages, regardless of the legal ground, in particular based on defects, delay and impossibility, culpa in contrahendo and tort – only in cases of intent and gross negligence, including intent and gross negligence on the part of our legal representatives and vicarious agents. We are also liable for simple negligence, including simple negligence on the part of our representatives and vicarious agents, for damages arising from the breach of an essential contractual duty, i.e. the fulfilment of which makes the proper execution of the contract at all possible and which the customer can therefore usually expect to be satisfied by us (cardinal obligation). As far as we are not liable for wilfully infringing a duty, liability is limited, however, to foreseeable damages that typically occur.
2. Claims for damages arising from injury of life, limb and health as well as the customer's rights according to the German Product Liability Act (ProdHaftG), the statutory special requirements applicable to the final delivery of goods to a consumer (Sections 478, 479 German Civil Code [BGB]), as well as other mandatory statutory liability regulations remain unaffected by the liability exclusions and limitations stipulated in para. 1. The above-stated liability exclusions and limitations also do not apply in the event that we fraudulently concealed a defect or if we have assumed a guarantee related to the quality of the goods.
3. Paras. 1 and 2 also apply if the customer claims reimbursement of useless expenditure instead of a claim of reimbursement of the damage.
4. Where our liability is excluded or limited, this also applies to the personal liability of our staff, workers, employees, representatives and vicarious agents.
5. The regulations above do not entail a change in the burden of proof to the disadvantage of the customer.

§ 8 Limitation Periods

1. In deviation from Section 438 (1) No. 3 German Civil Code (BGB), Section 634a (1) No. 1 and Section 634a (1) No. 3 German Civil Code (BGB), the customer's claims based on material and legal defects are subject to a limitation period of one year which commences on the start date of the statutory limitation period.
2. Mandatory rules on limitation periods remain unaffected. As a result, the reduced limitation period stated in para. 1 does not apply to claims based on an injury of life, limb or health, to claims based on intent and/or gross negligence and to claims based on the assumption of a guarantee. The longer limitation periods according to Section 438 (1) No. 1 German Civil Code (BGB) (third parties' rights in rem), Sections 438 (1) No. 2, 634a (1) No. 2 German Civil Code (BGB) (buildings, building material and building components as well as planning services for a building), Sections 438 (3), 634a (3) BGB (fraudulent intent) and Section 479 BGB (supplier's regress) also remain unaffected.
3. The limitation periods according to paras. 1 and 2 for claims based on material and legal defects also apply to competing contractual and non-contractual claims for damages of the customer that are based on a defect of the contractual item. If, however, in individual cases the application of the statutory rules on limitation periods results in a reduced limitation period for the competing claims, the statutory limitation period shall apply to the competing claims. The statutory limitation periods according to the German Product Liability Act (ProdHaftG) shall remain unaffected in any case.
4. If the limitation period on claims against us is reduced according to paras. 1 and 2, this reduction also applies to any claims of the customer against our legal representatives, staff, employees, subcontractors as well as vicarious agents that are based on the same legal grounds.

§ 9 Withdrawal/Termination Rights

1. The customer is only entitled to withdraw from the contract based on a breach of duty by us other than a defect if we are responsible for the breach of duty.

2. If the contract is a contract of works and services (*Werkvertrag*) or a contract for work and services regarding moveable, non-fungible items (*Werklieferungsvertrag*), the customer's free right to termination (Sections 651, 649 German Civil Code [BGB]) is excluded.

§ 10 Retention of Title

1. We reserve title to the delivered goods until receipt of all payments arising from the business relationship with the customer. In case of payment of the purchase price by means of cheques/bills of exchange, our retention of title does not expire when the customer's cheques are credited to us, but rather when the bill of exchange is paid by the customer.
2. The customer is entitled to resell the delivered goods in the course of ordinary business operations; however, the customer hereby now assigns to us all claims against his or her buyers or third parties resulting from the resale in the amount of the final invoice amount (including VAT) of our claims, regardless of whether the purchase item was sold with or without further processing. The customer retains the right to collect the amount due after the assignment. Our right to collect the amount due remains unaffected. However, we shall undertake not to collect the amount due as long as there is no protest related to cheques or bills of exchange, the customer fulfils his or her payment obligations, especially if the customer is not in default, and no application has been filed to open insolvency proceedings against the customer's assets. If this is the case, however, we can demand that the customer informs us about the assigned claims and the debtors, provides us with all information necessary to collect, delivers all associated documents to us and informs the debtors (third parties) of the assignment.
3. The items subject to reservation of title may neither be pledged to third parties nor transferred as collateral without our express written consent before complete payment of the secured claims is made. If third parties gain access to the retained item, in particular as related to seizures, the customer shall inform the third party about our ownership right and inform us of the situation immediately so that we can assert our right to ownership. If the third party is not in the position to reimburse to us the court or out-of-court costs incurred in this context, the customer is liable for such.
4. The customer must handle the items subject to reservation of title with care and sufficiently insure these against damages related to fire, flood and theft at the original value at his or her own cost. Maintenance and inspection work that becomes necessary is to be performed by the customer in due time at his or her own cost. In the event of destruction or damage of the items subject to reservation of title, the customer assigns to us in advance as additional security any existing claims to insurance payments in the amount of the final invoice amount (including VAT) of our claims with respect to the delivery item.
5. If the customer is in breach of contract, particularly payment default, we are entitled to withdraw from the agreement and to demand return of the goods regardless of additional statutory rights based on this breach of duty by the customer.
6. If the customer processes or reworks the items subject to reservation of title delivered by us, this is always done on our behalf. If the items subject to reservation of title delivered by us is processed with other items/materials that do not belong to us, we acquire co-ownership of the new item proportionate to the value of the items subject to reservation of title to the other processed items/materials at the time of processing. The customer shall grant us the co-ownership that results from this process. The provisions applicable to the goods subject to reservation of title shall also apply to items created by way of processing.
7. If the items subject to reservation of title delivered by us is inseparably mixed or combined with other items/materials that do not belong to us in such a way that the material components become one single item, we acquire co-ownership of the new items proportionate to the value of the items subject to reservation of title to the other combined or mixed items/materials at the time of combination or mixing. If the mixing or combination takes place in such a way that the customer's item is considered the main item, it is hereby agreed that the customer transfers proportional co-ownership to us. The customer shall grant us the co-ownership that results from this mixing or combination. The provisions applicable to the goods subject to reservation of title shall also apply to items created by way of combination or mixing.
8. If the realisable value of all collateral pledged to us exceeds the amount of all secured claims by more than 10 %, we shall release an appropriate part of our security interests at the customer's request. It is assumed that the requirements in the sentence above are fulfilled if the market price – or if there is no market price, the purchase or production price – of the

secured item (including assigned claims) exceeds the value of the secured claims by 150 %.
The collateral to be released shall be selected at our discretion.

§ 11 Final Provisions

1. Our relationship with the customer is governed exclusively by the applicable law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
2. The exclusive place of jurisdiction for all disputes arising from this contract is Verl. This jurisdiction clause applies only if our customer is a merchant, legal entity under public law or a special fund under public law.