

**General terms and conditions of the company BAUER Kompressoren GmbH**  
**for sales contracts and contracts for labour and materials**

**I. General provisions/scope of application:**

1. These general terms and conditions (GTC) apply to all sales contracts and contracts for labour and materials with customers of Bauer Kompressoren GmbH (hereinafter referred to as "BAUER") regarding any and all products and equipment sold by BAUER, also accessories and spare parts, as well as to service contracts such as installation, maintenance and trainings. Furthermore, the GTC apply mutatis mutandis to contracts for work, provided that the nature of the contract for work does not exclude the application of the GTC. The GTC apply exclusively. Deviating and/or supplementary provisions, especially contradictory terms and conditions of the customer, shall only apply if and insofar as BAUER explicitly confirms their validity in writing. These GTC also apply if BAUER unreservedly provides the contractual (ex works) delivery, service etc. knowing of the contradictory and/or supplementary conditions of the customer.
2. The GTC shall only apply if the contractual partner of BAUER is a businessman (section 14 *BGB* [*Bürgerliches Gesetzbuch*, German Civil Code]), a legal person under public law or a special estate under public law.
3. In an ongoing business relationship, these GTC shall apply in their respective version and – also without special indication or reference – also to all future transactions, especially also in case of calls or (subsequent) orders placed orally or by phone.
4. Any individual agreements concluded with customers shall take precedence over these GTC. The basis for the content of such an individual agreement shall be, subject to proof to the contrary, the contract the parties concluded in writing or the written order confirmation of BAUER.
5. Any business communications BAUER prints using electronic data processing or sends via e-mail, such as order confirmations, invoices, credit notifications, account statements and payment reminders, shall be valid and legally binding, also without signature.
6. Where these GTC require legally relevant declarations by the customer (e.g. for setting time limits, notice of defects or withdrawal) to be made in writing, the written form or text form shall be sufficient (e.g. by letter, e-mail, fax). Formal requirements set out by the law and further proofs, especially in case of doubt regarding the legitimisation of the party making the declaration, shall remain unaffected.
7. In cases of doubt, only the German version of these GTC shall apply. Translations into other languages are provided for information purposes only.

**II. Quotes and contract conclusion:**

1. Unless expressly agreed in writing, all quotes of BAUER are non-binding and without obligation and are subject to the reservation of BAUER receiving deliveries. Orders shall only become binding based on the written order confirmation, unless BAUER has already provided the requested service or if the service was already invoiced to the customer.
2. In electronic business transactions, the parties waive application of the regulations under section 312i clause 1, first sentence No. 1 to 3 *BGB*. The confirmation of receipt of electronic orders (e-mail) shall not constitute a binding acceptance of the order. But BAUER may, at own choice, combine the confirmation of receipt with a declaration of acceptance. In the event of orders using electronic business communica-

tions, BAUER will save the contract text and email it to the customer when requested; if the customer desires, also including these GTC.

3. If BAUER requires an export permit in order to comply with its performance obligations, the contract shall be concluded under the condition precedent that an export permit will be granted. BAUER is obliged to apply for a corresponding permit with the responsible authority. If the application is turned down, BAUER shall not have any further obligations.
4. Ownership rights and copyrights, especially the reproduction and dissemination rights, to images, designs, calculations and other documents that the customer receives in association with a quote of BAUER or otherwise, are reserved. These documents must not be made accessible to third parties with the exception of intended resale purposes and must be returned to BAUER on request in the event of no contract being concluded or if the contract fails.
5. The customer shall be liable for the accuracy and completeness of the documents he has to provide, such as templates and designs, as well as his rights thereto. If property rights of third parties are violated in the execution of an order, especially through the manufacture of products in accordance with designs, templates or other information of the customer, the customer shall indemnify and hold BAUER harmless in regard to any and all claims of the holder of the property right (including any legal costs).
6. A contract concluded between the customer and BAUER may only be terminated by the customer with the express permission of BAUER. If BAUER agrees to a cancellation, BAUER shall be entitled to lump-sum cancellation costs of 10 % of the gross order amount. BAUER reserves the right to prove to the customer that higher damages were caused by the cancellation.

**III. Prices and payment conditions:**

1. Unless regulated otherwise, the prices given by BAUER are given excluding packaging ex works Geretsried. Packaging and transport costs shall be borne by the customer. Unless expressly stated otherwise, the prices are net prices that do not include statutory value added tax. Confirmed prices shall only apply if the confirmed quantity is purchased. Deliveries and services that are not part of the quote (e.g. in the event of subsequent changes to the contract) shall be invoiced separately.
2. If the list price is higher at the time of the delivery than the price agreed with the customer, this higher list price shall apply if the delivery takes place more than four months after conclusion of the contract for reasons the customer is responsible for. This does not apply if the invoice has already been prepared and paid by the customer.
3. Unless agreed otherwise, the (purchase) price (without deductions) shall be payable within ten days after notification of readiness for acceptance and invoicing (date of the invoice). Deviating payment targets are listed in the invoice. Payments by the customer must solely be made to BAUER. BAUER reserves the right to demand advance payments from the customer; BAUER will declare any such request by no later than in the order confirmation.
4. Upon expiry of the above-mentioned payment term (or a deviating term agreed in individual contracts), the customer shall be in default. While in default, interest at the statutory interest rate must be paid on the respective payment amount. BAUER reserves the right to assert any further damages. The right to commercial maturity interest in accordance with section 353 *HGB* [*Handelsgesetzbuch*, German Commercial Code] shall remain unaffected.

5. If the customer is in default with payments that are due, BAUER shall have the right to withhold delivery of other orders of the customer. If the amounts in arrears are then paid, BAUER shall have the right to provide a new delivery at reasonable discretion, taking into consideration other delivery obligations (section 315 *BGB*).
6. BAUER shall have the right to assign payment claims to third parties.
7. The acceptance of bills of exchange and cheques shall require the consent of BAUER and they shall only be accepted as payment. Discount charges and other ancillary costs shall be borne by the customer.
8. If the customer fails to comply with his payment obligations (e.g. does not cash a cheque or bill of exchange) or if a request for insolvency proceedings against him is filed or if insolvency proceedings are initiated, BAUER shall have the right to declare due for payment all receivables without regard to the term of any collected bills of exchange that are not yet due. Furthermore, BAUER shall then have the right to only provide outstanding deliveries in return for advance payments or the provision of securities. If no advance payments are made or no securities provided, also after setting of an appropriate time limit, BAUER shall have the right to withdraw from the contract in regard to any services not yet provided, with the consequence that all claims of the customer in regard to the services that were not yet provided become void. **In these cases**, BAUER may also assert damages or retention of title in accordance with the regulations of the following section V. in addition to or instead of a withdrawal.

#### IV. Tolerances regarding service parameters:

1. Deemed agreed as characteristics of the goods or services shall be the product description of BAUER and, where applicable, of the manufacturer of any product supplied to BAUER. Promises and guarantees given by BAUER shall only be deemed binding if they have been given expressly and in writing. BAUER shall only be responsible for public statements of third parties, especially in advertisements, if BAUER arranged for these statements and if the purchase decision of the customer was actually influenced by the statements. Any information, designs, images, performance descriptions, information about dimensions and weights as well as other performance data set out in catalogues, price lists, brochures, circulars, other advertisement, other publications or the documents pertaining to the order are, to the customary extent in the industry, approximately correct and insofar of limited binding character. They shall only contain guarantees if they are expressly specified as such by BAUER in writing. A reference to DIN standards only serves as more detailed description of an article and does not give rise to a guarantee, unless any such was expressly agreed.
2. Reasonable deviations (tolerances) from performance data do not constitute material defects. This shall apply to the following tolerances in particular:
  - Delivery quantity for respiratory air compressors: measured with bottle filling at 0-200 bar - +/- 5 %
  - Delivery quantity for industrial air and gas compressors: measured following VDMA 4362 with flow meter against 0.8 times final pressure - +/- 5 %
  - Power input: KW +/- 5 %
  - Compressor rotation speed: 1/min +/- 5 %
  - Operating pressure (final pressure): bar +/- 5 %
  - Set pressure safety valve: bar +/- 5 %
  - Operating voltage: volt +/- 10 %, frequency Hz +/- 1 %

- Sound pressure in decibel at 1 m distance: +/- 2 db
- Net weight: kg +/- 10 %
- Dimensions: m +/- 10 %

3. BAUER reserves the right to modify the design of devices without prior notification if such modifications are customary in the industry and reasonable for the contractual partner; this especially applies to modifications of individual parts that BAUER purchases from suppliers. Design changes are always reasonable if they are based on a change in statutory or other regulations applicable to the respective products or if the performance data including tolerances are not affected by the changes and if there are no significant limitations regarding use by the customer. In the event of design changes within an ongoing production run, the customer cannot demand that already delivered devices be retrofitted as well, especially not in the event of products that BAUER obtains from suppliers.

#### V. Retention of title:

1. BAUER retains the title to movable items until payment of the (purchase) price in full.
2. In an ongoing business relationship with the customer, BAUER retains title to moveable items until any and all receivables under this business relationship were paid.
3. Under regular business operations, the customer shall have the right to resell and transfer the products delivered by BAUER. The customer already now assigns his claims from the resale of the products delivered by BAUER to BAUER. If the customer enters the receivables from the sale of the products into a current account, he assigns to BAUER the receivables from the closing balance; the amount shall be limited to the purchase price claims of BAUER for the products resold by the customer. BAUER accepts these assignments.
4. Insofar as the customer processes the products delivered by BAUER, BAUER shall become the owner of the manufactured new movable item. If the manufactured item is not manufactured using exclusively products from BAUER; the co-ownership share of BAUER shall depend on the proportion of the value of its products to the value of the remaining products that were utilised in the manufacture of the new item.
5. Under regular business operations, the customer shall have the right to resell and transfer the new product obtained by processing. The customer shall assign his claims from such a resale to BAUER in proportion to the co-ownership share of BAUER in the sold item. If the customer enters his receivables into a current account, he assigns to BAUER his receivables from the closing balance; the amount is limited to the proportion of the customer's receivables that corresponds to the co-ownership share of BAUER in the sold item. BAUER accepts the assignment.
6. BAUER grants the customer the revocable right to collect the claims assigned to BAUER. The collection authorisation shall expire, also without being revoked, as soon as the customer is in excessive debt and/or insolvent, if he is at risk of becoming insolvent or in the event of a significant deterioration of fortune. Upon expiry of the collection authorisation, the customer is obliged to immediately notify the garnishee in writing of the assignment of the claim to BAUER and to inform BAUER of the notification of assignment. Furthermore, the customer is obliged to make available to BAUER, on request, any and all information and documents that are required to assert the assigned claims.
7. On request of the customer, BAUER shall release its security rights insofar as the realisable value of the items still in the possession of BAUER and any claims assigned to BAUER exceed 120 % of BAUER's claims under the ongoing business relationship with the customer. When choosing which securities to release, BAUER shall take the justified interests of the customer into consideration.

## VI. Warranty:

1. The customer shall only be entitled to warranty claims if the customer complied with his statutory inspection and damage notification obligations (sections 377, 381 *HGB*). The customer is obliged to inspect the goods in due form upon arrival in all cases (also independent from statutory obligations). The customer must enter all discernible defects, shortages or incorrect deliveries on the delivery note or bill of lading immediately upon arrival of the goods, but no later than five working days after receipt and he shall always report these to BAUER in writing prior to processing or installation. Otherwise the deliveries shall be deemed accepted. The customer shall bear the entire burden of proof regarding any and all conditions for asserting damage claims, especially the damage itself, the time of its discovery and the timeliness of the notice of defects.
2. The creation of a guarantee obligation is dependent on the condition precedent of correct installation of the equipment and other delivery items of BAUER. The warranty obligation expires if the delivered goods are modified by third parties or through the installation of third-party parts, unless the modification is not causing the defect. It shall also expire if the customer disregards regulations regarding the putting into operation and if doing so results in a defect.
3. The warranty period shall be one year from transfer of risk. The regulations regarding the statute of limitations for recourse claims of the contractor against the supplier under sections 478, 479 *BGB* shall remain unaffected in any case.
4. No warranty obligation applies if the customer failed to grant BAUER the necessary amount of time or opportunity after reporting the defect to undertake any repairs or replacement deliveries BAUER deems necessary. Only in urgent cases of danger to operational safety, in order to avert disproportionately serious damage or if BAUER is behind schedule with the removal of the damage shall the customer have the right to remove the defect himself or through a third party and to demand BAUER to reimburse the necessary costs. However, the condition that BAUER must be informed immediately of the damage still applies. The customer does not have the right to remove the defect himself or through a third party if BAUER is not obliged by law to provide a corresponding supplementary performance.
5. The warranty shall be limited, at the choice of BAUER, to a replacement delivery, free of charge and carriage paid within the territory of the European Union and the European Economic Area, or subsequent improvement ("supplementary performance"). The supplementary performance does not include the removal of the defective goods nor the installation of the new goods, unless BAUER was responsible for the installation of the goods in the first place. Where a defect is actually present, BAUER shall bear the costs necessary for inspection and supplementary performance with the exception of costs for installation or removal, insofar as installation of the goods was not part of the contract. The costs incurred in an unjustified demand for removal of defects (e.g. inspection and transport costs) shall be borne by the customer. In the event of a replacement delivery, the rejected goods are transferred to the ownership of BAUER at the moment in which BAUER accepts the complaint. Additional costs that are caused by impeded access to the facility or insufficient work space or by delivery into a territory outside the European Union or the European Economic Area shall always be borne by the customer. If the customer receives inadequate assembly instructions, BAUER shall only be obliged to provide correct assem-

bly instructions. This obligation does not apply if the fault in the assembly instructions do not prevent proper assembly.

6. If the customer chooses to withdraw from the contract due to a defect following unsuccessful supplementary performance, he shall not also be entitled to damages. If he chooses damages following unsuccessful supplementary performance, the goods shall remain with the customer if that is acceptable for him. In this case, damages shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply if BAUER deliberately caused the contract violation.
7. Also in the event of defects, claims of the customer for damages and/or reimbursement of expenses shall only apply in accordance with these GTC and are otherwise excluded. Excluded from the warranty are, in particular, damages that occurred as a result of unsuitable and improper use, incorrect or improper installation or putting into operation by the customer or third parties, usual and natural wear and tear, incorrect or negligent treatment, the use of unsuitable operating equipment, improper storage as well as climatic, chemical, electrochemical and electronic influences unless these were caused by a fault on the part of BAUER. The same applies to damages incurred as a result of ignoring the assembly, operation and maintenance instructions as well as damages caused by improper modifications or repair work by the customer or third parties and impact of any third-party parts as well as from the continued use despite occurrence of an obvious error.
8. BAUER does not assume any liability for defects of only a certain class of items that exceeds the liability for specific items; in particular, the procurement obligation of BAUER does not give rise to liability regardless of negligence or fault of BAUER for any damage caused by the defect. Insofar as the parties have not excluded the claim to reimbursement of expenses of the customer in terms of section 478 clause 2 *BGB* through granting an equivalent settlement, the customer is obliged to refuse a supplementary performance in the event of resale to a consumer towards the consumer in terms of section 439 clause 3 *BGB* if a supplementary performance would only be possible at disproportionate costs. In the event of a resale of the item by the customer to a company, he shall also oblige the company to refuse a supplementary performance towards a consumer in the event of resale of the item to a consumer if a supplementary performance would only be possible at disproportionate costs. This means that BAUER will only reimburse the customer for expenses for a supplementary performance under section 478 clause 2 *BGB* if the expenses are not disproportionate in terms of section 439 clause 3 *BGB*.

## VII. Delivery times, delivery and acceptance:

1. The dates and times for deliveries and/or services indicated by BAUER shall only be binding as approximations unless they were guaranteed in writing as specific calendar dates. Indicated delivery times shall always commence upon sending of the written order confirmation, but not before the customer has submitted the documents he has to provide and/or fulfilment of all other obligations to co-operate and also not before receipt of any official certifications or permits that may be required. If the customer is obliged to make advance payments, the delivery time shall commence once BAUER has received the advance payment in full.
2. The delivery and service times shall be deemed complied with if the delivered item has left the works or warehouse of BAUER or if the customer was informed of readiness for shipping or the service was provided before the delivery and service times expire. BAUER may make partial deliveries to an extent acceptable for the customer. Where acceptance is required, the notification of acceptability and readiness for acceptance or a prior acceptance shall be decisive, with the exception of cases of justified refusal of acceptance.

3. If BAUER is prevented from complying with agreed delivery dates for reasons BAUER is not responsible for (e.g. force majeure, sovereign interventions, disasters, war, riots, industrial actions in own facilities, facilities of suppliers or regarding means of transport), BAUER shall inform the customer thereof immediately; in this event, BAUER shall have the right to provide the delivery at a later point when the cause for the impediment is removed. If the delivery is delayed by more than four months, BAUER and the customer shall have the right to refuse the delivery and to withdraw from the contract. In the event of a withdrawal, the customer has no further rights or claims due to non-delivery or late delivery based on these grounds, also not if these reasons only occur after the delivery time was already exceeded or BAUER in default.
4. In case of exceedance of the delivery or service times, the customer shall have statutory rights. However, a delivery shall only be delayed after expiry of a grace period set by the customer. Damage claims based on a delay, irrespective of the legal grounds, are not effective unless BAUER is guilty of intent or gross negligence.
5. If the customer delays acceptance or the delivery is delayed for other reasons the customer is responsible for, the customer shall be obliged to bear the resulting damages and costs (especially storage costs), starting one month after notification of readiness for shipping or expiry of the delivery time. BAUER shall have the right to invoice a lump-sum of 1.0 % of the invoice amount of the goods for this for each commenced month plus potential costs for storage, preservation and a possible new acceptance in order to guarantee the promised characteristics. The customer shall be entitled to prove lower damages just like BAUER is entitled to prove higher damages as well as to assert further legal claims (e.g. reimbursement of additional costs, cancellation). The aforementioned lump-sum shall be counted towards further payment claims of BAUER towards the customer.
6. Condition for the compliance with delivery and service times is the fulfilment of contractual duties by the customer. On request of BAUER at any time, he is obliged to confirm his readiness for acceptance and the completion of any necessary preparatory actions in writing prior to delivery. If he refuses to do so or refuses to accept the goods, he shall be in default of acceptance. In this event, BAUER is entitled to lump-sum damages of 10 % of the gross order value; additionally, the regulations in section VII.5 apply mutatis mutandis.
7. BAUER's delivery is provided ex works (EXW). If the facility in the aforementioned sense is not specified in an individual order, the following delivery locations apply:
  - Spare parts: Bauer Kompressoren GmbH, Wallensteinstraße 4a, 82538 Geretsried
  - Plants: Brenner Verpackung GmbH & Co. KG, Schorn 1, 82319 Starnberg

If, in individual cases, it is agreed to ship the goods to a different destination, BAUER shall have the right to decide the type of transport, the means of shipping, the transport route as well as the type and scope of required protection and the selection of forwarder or carrier as well as packaging; BAUER shall make these decisions in accordance with prudent discretion and customary diligence under exclusion of any liability. On request of the customer, the shipment will be insured by BAUER at the cost of the customer against theft, breakage as well as damage caused by transport, fire and water as well as other insurable risks.

8. Is the transaction based on a service contract, the customer shall be in default of acceptance of the service if he does not accept the service within one week of handover, notification of

completion or invoicing. Acceptance shall be deemed completed when the customer puts the service into operation for a period of fourteen days without complaint after handover, notification of completion or invoicing and if BAUER has pointed out this consequence upon handover, in the notification of completion or upon invoicing.

#### VIII. Transfer of risk:

1. The risk of accidental loss and accidental deterioration shall be transferred to the customer as soon as BAUER provides the goods for collection or delivery (ex works, EXW) also if BAUER has accepted further services, e.g. delivery or shipping costs. If a delivery method deviating from "ex works" is expressly agreed, the risk, also the risk of delay, shall be transferred to the customer upon handover to the forwarder, carrier or collecting party; this shall also apply in case of freight-free delivery or free delivery. Only and exclusively in case of delivery by BAUER itself shall BAUER bear the risk until delivery to the destination. The above shall also apply to partial deliveries.
2. Delivered items must be accepted by the customer, also if they exhibit insignificant defects, without prejudice to the rights set out in section VI. Complaints based on transport damage must also be asserted towards forwarders, carriers and their insurances or similar in time by the customer himself.

#### IX. Liability for defects:

1. The liability of BAUER is limited to EUR 5 million for material defects and EUR 50,000.00 for financial losses. This limitation of liability does not apply in case of
  - a) injury to life, limb or health that was caused by a grossly negligent breach of duty by BAUER or a deliberate or grossly negligent breach of duty by a legal representative or vicarious agent of BAUER;
  - b) other damages that was caused by a grossly negligent breach of duty by BAUER or a deliberate or grossly negligent breach of duty by a legal representative or vicarious agent of BAUER;
  - c) damages that resulted from the not just minor culpable violation of major contractual duties or crucial secondary obligations the compliance with which the customer may rely on and which are important to achieve the purpose of the contract (cardinal duties); in this case, the liability of BAUER is limited to the reimbursement for foreseeable damage typically incurred;
  - d) damages due to defects of the purchased item if BAUER has given a guarantee for the characteristics of the item;
  - e) defects that BAUER concealed with malicious intent.
2. BAUER shall not be liable for loss of profit, absence of savings, damages caused by third-party claims and other indirect damages and consequential damages as well as for the loss of recorded data, unless BAUER has created special confidence in facts in this regard. BAUER shall only be liable for data recovery if the customer has made sure that these data can be reconstructed from other data material with reasonable effort.
3. The above exclusions and limitations of liability shall apply accordingly to non-contractual and pre-contractual liability. They do not, however, apply to the damages listed in clauses 1 a) to e). Neither do they apply to claims under product liability law.
4. Insofar as a liability of BAUER is limited or excluded, this shall also apply to the personal liability of employees, representatives and other vicarious agents of BAUER.
5. Claims of the customer for damages shall become time-barred upon the end of the warranty period set out in section VI. 3., with the exception of injury to life, limb or health, damages resulting from intentional, malicious or grossly negligent behaviour or resulting

from the violation of cardinal duties or claims under product liability law; these claims shall become time-barred in accordance with statutory periods.

6. The customer may only withdraw or cancel due to a violation of duty that does not constitute a defect of the goods if BAUER is responsible for the violation of duty.
7. None of the above regulations shall give rise to a change in distribution of burden of proof as established by the law or court decisions.

#### **X. Rights of retention, rights to refuse services, set-off**

1. The customer shall only be entitled to set off with counterclaims if his counterclaims were legally determined, are undisputed or were accepted by BAUER. Rights of retention or other rights to refuse services may only be exercised against BAUER if and insofar they are based on the same contractual relationship. Also in an ongoing business relationship each individual order shall be considered a separate contractual relationship.
2. The customer shall not be entitled to assert a right to refuse a service in accordance with section 320 *BGB* or a right of retention in accordance with section 273 *BGB*, unless these rights are based on a defect of the purchased item for which BAUER already received part of the payment that corresponds to the value of its performance or on counterclaims of the customer that are undisputed, legally determined or accepted by BAUER.

#### **XI. Copyrights and violations of property rights:**

1. The customer guarantees to not make or to have copies or imitations made of BAUER products. He acknowledges that the products of BAUER are protected against copies and imitations by patents and other industrial property rights. A violation of these rights can result in serious criminal consequences and shall entitle BAUER to assert damage claims and injunctive relief against the customer.
2. Insofar as the scope of delivery also includes operating software subject to licensing, BAUER grants the customer upon payment in full of all invoices for the delivery a simple, non-exclusive right to use this software in its current form upon delivery (release) on the supplied equipment that is only transferable in combination with the associated hardware. Special licensing terms apply to user software which will be given to the customer together with the respective software. The customer is obliged to install and use software exclusively within the parameters of the authorisations that were granted.
3. The customer acknowledges that software contains or can represent brand rights, know-how and other intellectual property and that these rights are those of BAUER or its suppliers. The work documents for trainings are likewise protected by copyrights and may – also in excerpts – only be duplicated with the express written permission of BAUER.
4. If third parties assert claims towards the customer due to the violation of a property right through the use of a product provided by BAUER, the customer shall immediately notify BAUER thereof in writing. BAUER shall, at its own discretion, either comply with these claims at own costs or shall avert these or terminate disputes by settlement. The customer shall support BAUER in the defence in every reasonable manner. BAUER shall bear all financial burdens resulting from a judgement against the customer, including any damages awarded to third parties and the costs of the proceedings. BAUER shall bear the costs of a settlement if BAUER agrees

to the settlement. The customer grants BAUER the sole authority to decide on legal defence and on settlement negotiations. He shall grant BAUER the necessary powers of attorney on a case-by-case basis.

5. Should BAUER become convinced that a product may become the object of complaints regarding property rights, BAUER shall, at its choice, have the right
  - to acquire at own costs the right for the customer to continue to use the product,
  - to replace the product at own costs to a reasonable extent or to modify the product so that it no longer violates third-party rights;
  - to take back the software, devices or parts thereof and to reimburse the customer for the purchase price minus a reasonable usage fee.
6. BAUER shall not have any obligations if the software, machines or parts thereof are modified by the customer or connected with programmes or data not provided by BAUER and if this result in third-party claims.

#### **XII. Ban on use and export limitation:**

1. Without an express permission, granted in advance and in writing, the customer shall not have the right to use or to provide BAUER products to a third party for use in connection with the operation or maintenance of
  - a facility that uses nuclear energy,
  - mass transport facilities,
  - facilities for air traffic control or for aircraft. The regulations in this section do not apply to flight simulators.
2. The goods are intended to remain in the country of delivery as agreed with the customer and may not be exported from that country without the permission of BAUER. If BAUER grants such a permission, the customer is obliged towards BAUER to comply with the respective national and international regulations regarding re-/export control law, especially those of the Federal Republic of Germany, the European Union and the United States of America.
3. The customer must assess and ensure that the (direct or indirect) transfer or the (direct or indirect) mediation of contracts regarding the goods/services of BAUER does not violate an embargo issued by Federal Republic of Germany, the European Union, the United States of America or the United Nations or other national or international export control law regulations. This shall also apply if the provision of other economic resources in connection with the goods of BAUER violates such an embargo or the aforementioned regulations. Moreover, the customer is obliged to assess and to ensure that the goods are, upon transfer, not intended for a prohibited use and/or any use relevant for the defence industry, nuclear or weapons use that is subject to permits if no corresponding permit was issued. The customer must comply with the regulations of any and all pertinent lists of sanctions, especially those of the European Union and the United States of America, in regard to business transactions with the listed persons, companies and/or organisations. The customer guarantees that he will not make the supplied goods available, neither directly nor indirectly, to a natural or legal person, organisation and/or company that is subject to sanctions under national and international regulations, especially of the Federal Republic of Germany, the European Union, the United Nations and the United States of America, and that he will not deliver the supplied goods, neither directly nor indirectly, to a country or territory that is subject to an embargo in the aforementioned sense.
4. On request of BAUER, the customer will immediately provide BAUER with all information about the final recipient, the final destination and the intended use of the goods delivered by BAUER as

well as any export restrictions applying in this regard, especially also in form of an end user-certificate (EUC).

5. If authorities and/or other third parties assert claims against BAUER as a result of a violation of the above obligations, the customer shall indemnify and hold BAUER harmless in full and shall reimburse BAUER for all damages and costs incurred in this context.

### **XIII. Final provisions:**

1. The place of performance for all claims under the business relationship with the customer is Munich; the place of performance for the delivery obligations of BAUER, however, is the place of business of the works or warehouse BAUER commissioned with the delivery.
2. The relationship of the parties is exclusively subject to German law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are excluded.
3. If the contractual partner is a businessman in terms of the *HGB*, a legal person under public law or a special estate under public law, the exclusive and also international place of jurisdiction for all claims under and in connection with the contractual relationship is, at the choice of the suing party, Munich or the general place of jurisdiction of the defendant party. Overriding statutory provisions, especially exclusive legal jurisdictions, shall remain unaffected.
4. If a provision of these general terms and conditions is or becomes void in part or in whole, this shall not affect the validity of the remaining provisions.

\*\*\*