

General Terms and Conditions of BD SENSORS GmbH (Limited Liability Company)

1. General Terms and Conditions

(1) The following terms of sale and delivery apply to all our quotations, deliveries and services, including but not limited to informational and consultancy services; in the case of repair services, only Sections 1, 2, 3, 4, 6, 7, 8, 10 shall apply. Our terms of sale and delivery shall also apply to all future business dealings between our customers and ourselves, even in the event that we do not explicitly refer to them when executing the contract in question. The version current at the time of the signing of the contract shall be valid; we will gladly send a copy of said version to the customer upon request. There shall be no valid terms apart from these, even in the event that we do not explicitly contradict such terms.

2. Delivery – Scope of Contract

(1) In absence of an agreement to the contrary, our quotations are subject to confirmation.
(2) Our written contract confirmation shall be the sole binding document stipulating the goods and services owed according to the contract. Sketches, drawings, illustrations, measurements, weights or other data provided in brochures, circulars, price lists, other publications or in our quotations and / or the documentation belonging thereto shall not constitute a warranty regarding quality or any other warranty; they serve only to describe the product. They shall be only of limited importance and applicability.
(3) We reserve the right to make modifications in the construction, choice of materials, specifications and type of assembly / building, even after having sent a contract confirmation, as long as these modifications serve to improve the product technologically and the customer's acceptance can be reasonably expected.

3. Delivery Times

(1) We have the right to make partial deliveries of goods and / or services.
(2) In all cases, delivery and / or service periods shall begin only once agreement has been reached regarding all details of contract performance and the customer has performed all duties required of it, including but not limited to providing all information, documentation, samples and parts to be provided by it and paying a deposit, if such has been agreed. Should we find gaps or defects in the above, we shall inform the customer immediately. Should the customer be in arrears with a payment or a service / action to which it is obligated, any delivery and / or service periods that may previously have been agreed shall be frozen for the duration of the arrears.
(3) Should our service not be provided or our delivery not take place on the agreed date, the customer may only cancel the contract or claim damages compensation if the delay was our responsibility and under our control and the customer previously set a reasonable follow-up deadline period of at least 20 days which was not met.
(4) Unpredictable and unavoidable events (war, situations similar to war, energy or materials shortages, sabotage, strikes, legal lock-outs, as well as all other interruptions in production or acts by governmental authorities over which we have no control), shall for their entire duration release us from the obligation to perform services and / or deliver goods within the specified period. This shall also apply in the event that they occur during a previous delay. Delivery periods and dates shall thus be extended to a reasonable degree. This shall also apply to services and / or goods from our suppliers that are not provided punctually or properly, for reasons beyond our control. Should events as described above have a duration of more than six weeks, the customer shall have the right to cancel the contract; the same shall apply to our right to cancel the contract.

4. Prices – Terms of Payment

(1) In the event of increased prices due to higher costs for materials and / or wages, we reserve the right to invoice the price valid at the time of delivery in the case that the delivery takes place more than four months after the date of the contract confirmation, and as long as the adjustment of the price is reasonable for the customer, taking our own interests into account. If no contract confirmation has been provided, the date of the order shall be the reference date.
(2) For all orders based on our catalogues, brochures and price lists, and in absence of any explicit agreement to the contrary, the prices contained in the price list current on the date of contract signature shall be valid. These shall be sent to the customer upon request.
(3) Our prices shall be understood to be ex works, packaging not included. The legally stipulated value-added tax is not included in the price. The current tax rate as of the date of delivery or performance will be calculated and added to the price.
(4) In absence of any other agreements, and subject to Section 8, all payments shall be made net within 30 days of the invoice date to the office / account stipulated on the invoice.
(5) Cheques and bills of exchange shall be accepted as payment on a provisional basis only. The payment by cheque or bill of exchange shall be deemed to have been made only when the invoice amount has been irrevocably paid into our bank account. The same shall apply in the case of payment by credit or purchasing card. All expenses caused by bills of exchange, cheques and / or bank discounts shall be borne solely by the customer.
(6) The customer shall have the right to the offsetting of costs only in the event that its counterclaims are confirmed in a legally binding manner, are uncontested or accepted by us; the customer shall only be entitled to retain payment in such cases. There shall be no retention of payment due to counterclaims that do not have the same legal basis.
(7) The customer may only assign any claims against us to third parties with our explicit written consent, without which such assignment shall be invalid; monetary claims shall be excepted from the above.
(8) In the event that after the signing of a contract circumstances become known that make the customer's ability to pay appear questionable, such as the initiation of bankruptcy proceedings, a tendency to make late payments or arrears in earlier deliveries / performances, we shall be authorised to refuse to perform our contractual obligations until we have received a reasonable security deposit / collateral; in this case, any delivery or performance periods shall be extended correspondingly. We shall also be entitled to deliver on a C.O.D. basis. In the event that delivery has already taken place, we shall be entitled to deviate from Section 4 and demand the immediate payment of our invoice. Should the customer fail to fulfil our request for a security deposit / collateral within a reasonable period, we shall be entitled to cancel the contract; in this case the customer shall have no claim to damages compensation.

5. Passing of the Risk – Packaging

(1) The risk of an accidental loss or accidental damaging of the goods shall pass to the customer upon delivery ex works. This shall also apply in the event of partial deliveries or if we have agreed to perform other services, such as delivery or bearing delivery costs. In this case we shall select the type and route of delivery that appear to us to be most economical.
(2) The customer shall be obligated to accept deliveries containing minor defects.
(3) Should the customer delay acceptance, we shall be entitled to demand compensation for damages incurred by us as a result. In these cases, the risk of accidental loss or accidental damaging of the goods shall pass to the customer upon notice of readiness for delivery.

6. Warranty

Our warranty is provided in accordance with legal requirements based on the following rules:
(1) We provide a warranty only in the case that the object in question is used properly and in accordance with our specifications. There shall be no warranty for defects due to chemical, physical or thermal values that are unusual and of which we have not been informed by the customer upon signing the contract. The same shall apply in the case of defects caused by repairs or modifications to the object in question which have been performed by a third party.
(2) There shall be no warranty granted for a minor reduction of value or function in the object in question due to a defect, or for minor deviations in values and / or amounts.
(3) Regardless of the commercial obligations to inspect and notify the supplier of defects which are stipulated by law, obvious defects must be reported to us in writing within 14 days after receiving of the delivery; otherwise, no warranty shall be granted.
(4) After finding a defect, the customer must return the defective object to us. The buyer shall bear the costs for said return if it is established that the buyer is responsible for said defect.
(5) Should the object have a defect, we will either remedy it or deliver a replacement object. The customer must grant us a follow-up delivery period of at least 30 days for the performance of these obligations.

(6) Should the obligations not have been performed at the end of this follow-up delivery period, the customer may, in accordance with legal requirements and Section 7, claim damages compensation, reimbursement of costs, a discount in the purchasing price, may cancel the contract or – in the case of repair contracts – remedy the defect itself at our expense.
(7) To the extent that the customer is entitled to the abovementioned rights in addition to the late performance of the obligations, the customer shall be obligated to inform us upon request and within 14 days whether and how it intends to exercise these rights. Should the customer not declare its intentions within this period, or should the customer demand late performance of obligations, the customer shall be entitled to claim the other rights only after a further follow-up delivery period of 30 days has expired without results. The abovementioned provision shall be valid in the event that it becomes clear already during a follow-up delivery period that we are unable to meet the deadline.
(8) Only the customer is entitled to warranty rights. No transfer to third parties is permitted.
(9) The customer alone shall bear expenses caused by unjustified complaints regarding the product.

7. Limitation of Liability

(1) We are liable to the full extent allowed by (German) law for damages incurred by our customers in the event that our offices or our executives are culpable of gross negligence or of intent. In addition, we are liable in the event that we are in breach of important contractual obligations, upon the fulfillment of which the customer should especially be able to rely. This shall also apply to cases of simple negligence. In the event of breach of important contractual provisions due to simple negligence, and in the case of intent and / or gross negligence of persons responsible for fulfilling contractual obligations who are not executives, we shall be liable only for damages to an amount that would be predictable in a typical case, taking all important and recognisable circumstances into account. We assume no liability for consequential damage such as lost profits or savings or any other indirect damage, or for recorded data. We assume no liability for the breach of less important contractual duties due to simple negligence.
(2) The abovementioned liability limitations shall apply to all damages claims, independent of their legal basis. They shall not, however, apply to damages claims resulting from harm to the life, body or health of persons. Our liability in accordance with the German Product Liability Act (Produkthaftungsgesetz) and in the event that we offer a quality or durability warranty shall also not be affected by the above.
(3) The liability limitations above shall also apply to our employees and all other third parties employed or commissioned by us.

8. Hazardous Working Materials

(1) In delivering objects to be repaired by us, or in returning objects to us, the customer agrees to strictly observe the version of the German Hazardous Materials Act (Gefahrstoffverordnung) valid at the time of delivery.
(2) Especially devices and equipment that are filled with hazardous materials or have come into contact with such materials in any other way shall be packed and labelled accordingly by the customer. The customer shall also explicitly refer to any connection with hazardous materials as regulated by the abovementioned Act in the written repair contract and – if this can be reasonably expected – append a safety data sheet in accordance with 91/155/EWG.
(3) We reserve the right to refuse to accept and repair devices or equipment as described in 8(2) at any time and without any limitation whatsoever, referring to the connection with hazardous working materials, except when the abovementioned devices were manufactured by us and are under our warranty according to German law. We assume no liability for compensation claims of any kind.
(4) We explicitly reserve the right to press damages claims in the event that the customer fails to observe the regulations regarding hazardous working materials.

9. Reservation of Ownership

(1) Goods delivered shall remain our property until all claims and / or invoices already existing at the time the contract in question was signed and issued to the party placing the order are paid in full.
(2) The customer shall, however, be entitled to sell goods delivered by us to third parties in a proper commercial manner. However, the customer hereby and now assigns to us all claims against its customers to the amount invoiced by us for the goods to which we retain the title. The customer shall be entitled to collect the claim as long as it is not in arrears with its payment(s). It shall, however, be obligated upon written request by us to provide us with the name of the customer, turn over all necessary documentation to us and to inform the customer of the assignment of the claim, in the event that we – should the customer be in arrears with payment(s) – collect the claim ourselves.
(3) The customer shall not be entitled to pledge objects to which we retain the title as collateral or to transfer the title of said objects as security. The customer shall be obligated to inform us immediately of distraint or execution proceedings of any kind and to give us the opportunity to initiate third-party intervention against execution in accordance with § 771 ZPO; all costs caused by such actions shall be borne by the customer.
(4) Should our property be lost due to mandatory legal provisions, the customer shall be obligated to assign to us already now any rights to compensation from the owner to which the customer is entitled, to the amount of the sum invoiced by us for the object to which we retain the title.
(5) Should the object delivered by us and to which we retain the title be mixed, dissolved in or otherwise connected with other goods which are not our property, the customer shall grant us co-ownership to the amount of the sum invoiced by us for the object to which we retain the title.

10. Other Provisions

(1) Patent rights, copyrights and all other protective rights involved in the goods and / or services provided by us are not transferred to the customer. The customer may only publish or otherwise distribute plans, quotations, price files, illustrations, sketches, samples / patterns and any other technical documents with our previous written permission. The same shall apply to the duplication or copying of the abovementioned documents for third parties, or allowing third parties access to the abovementioned documents.
(2) In absence of explicit written agreements to the contrary, customer-specific tools and working equipment / materials purchased by us in order to perform a contract shall remain our property even in the event that we have invoiced the cost to the customer.
(3) The customer hereby agrees to the processing in a central office or location of any data regarding business deals, should such data be processed among our affiliates. We explicitly reserve the right to take out an insurance policy against bad debts for any business deals agreed to with customers and in this connection to provide the insurance company with necessary information regarding the customer; the customer hereby agrees to said communication.
(4) In the case of all disputes arising from the contract, including but not limited to legal proceedings regarding certificates, cheques, and bills of exchange, and provided the customer is a businessperson, a legal person under public law or a special fund under public law, any legal action shall be filed at the court that has the jurisdiction, both in terms of location and of type of claim, for our company's headquarters or the branch of our company that carried out delivery. In addition, we shall also be entitled to file legal proceedings at the location of the customer's headquarters.
(5) German law, including CISG, shall apply to these General Terms and Conditions.
(6) Modifications, supplements and additions and the cancellation of these General Terms and Conditions may be made only in writing and with BD SENSORS' explicit consent. Contracts and acceptance, modification to contracts, supplements and ancillary agreements must be in writing to be valid; also, the other party to the contract must be informed of them. Communication by e-mail shall be considered as equivalent to written communication. Both parties to the contract shall be obligated to inform the other party of new or changed e-mail addresses.
(7) Should individual provisions of the contract be or become invalid or legally contestable, or should the contract be incomplete, the validity and applicability of the remaining provisions shall not be affected thereby. Said remaining provisions shall be interpreted and / or supplemented in such a way as to fulfil the parties' intentions as far as possible.