

**GENERAL TERMS AND CONDITIONS OF SALE of Bomat Heiztechnik GmbH**  
(Valid as of: November 2013)

**I. Scope of Application / Offers of Sale**

1. These General Terms and Conditions of Sale shall apply to all existing and future business relationships entered into by Bomat Heiztechnik GmbH (the "Vendor") with entrepreneurs (Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*)), legal entities under public law or funds under public law (each a "Purchaser"). The terms and conditions of purchase of the Purchaser shall not apply.
2. All offers of the Vendor shall be non-binding and subject to change. Only an order of goods by the Purchaser shall be deemed a binding contractual offer. The Vendor may accept this contractual offer within 2 weeks after its receipt thereof, either in writing (for example, by way of confirmation of the order) or by way of delivery of the goods to the Purchaser. The content of any agreements including, in particular the scope of the services to be provided, shall be governed solely by the Vendor's declaration of acceptance.
3. Relative to the specifications of the Vendor regarding the object of delivery or service (e.g. weights, dimensions, utility values, resilience, tolerances, technical data or product designations) as well as its representations (e.g. drawings and figures), the Vendor reserves the right to make changes, provided the delivery item is not significantly changed by this or its quality is improved and provided the changes or modifications are reasonable for the Purchaser.

**II. Prices + Terms of Delivery**

1. Unless otherwise agreed upon, the prices and terms and conditions specified on the price list of the Vendor applicable at the time of the conclusion of the contract shall apply, plus any applicable VAT. Delivery shall be effected ex works and the "EXW" terms (Incoterms 2010) shall apply; any ancillary costs accruing, such as assembly, start-up, transport or packaging costs, customs duties in the case of export deliveries, charges or other public dues shall be borne by the Purchaser. The Vendor shall not be obligated to take back any transportation or other packaging pursuant to the German Packaging Ordinance (*Verpackungsverordnung*); this shall become the property of the Purchaser.
2. Should there be any changes to the amount of any dues or other third-party charges not falling within the Vendor's sphere of influence which are included in the price agreed upon by the parties at any point in time more than four weeks after the conclusion of the agreement, or should any such dues or charges newly arise, the Vendor shall be entitled to adjust its price accordingly.

**III. Payment and Off-Setting**

1. Unless otherwise agreed or indicated in an invoice, the purchase price shall be payable immediately following delivery, without any deduction of discounts for cash payments and in such a manner as to ensure that the amount in question is available to the Vendor on the due date. Any costs arising in connection with payment transactions shall be borne by the Purchaser. The Purchaser shall automatically be deemed to be in default if the Purchaser does not effect payment within 14 calendar days of the delivery of the goods and the issuing of the invoice therefor. In the case of arrears of payment for which it is not responsible, the Vendor shall be entitled, irrespective of any other claims for compensation which it may have, to suspend the fulfilment of its own contractual obligations until the outstanding payments have been effected. The Purchaser shall have rights of retention and off-setting rights only to the extent that his/her/its counter claims are undisputed or legally enforceable.
2. In the case of non-compliance with the terms of payment or default, interest in the amount of 8 percentage points above the base interest rate, or any higher interest rate agreed upon by the parties, shall be payable. The Vendor reserves the right to bring a claim for any further damage incurred by it as a result of the Purchaser defaulting on his/her/its payment obligations.
3. Should the Purchaser fall into arrears in a not insignificant amount or fail to honour a bill of exchange upon its maturity, or should other circumstances arise which indicate a significant deterioration in the solvency of the Purchaser and which compromise the Vendor's claim for payment, the Vendor shall be entitled to call in all of its non-time-barred claims arising out of its current business relationship with the Purchaser, and to demand provision of collateral or payment in advance for outstanding deliveries or services arising out of the business relationship, unless the Purchaser provides adequate security therefor.
4. Any discount agreed upon by the parties shall in all cases relate only to the invoice value exclusive of any freight charges and shall be conditional upon the settlement in full of all outstanding debts of the Purchaser at the time of the awarding of the discount.
5. In the case of deliveries affected – pursuant to agreements or due to the nature of the items in question – in the form of partial deliveries, the Vendor shall be entitled to demand partial payment for each partial delivery which reflects the proportion of the total order volume represented by that partial delivery.

**IV. Effecting of Deliveries, Delivery Periods and Dates**

1. Unless expressly described as binding, any information relating to delivery times shall not be binding.
2. Delivery periods shall commence upon the date on which the order confirmation is received and shall be conditional upon the timely clarification of all the details of the order and the timely fulfilment of all the obligations of the Purchaser, such as the procurement of all official certifications, the issuing of letters of credits and guarantees or the effecting of advance payments. Where these conditions are not satisfied, the delivery period shall be extended accordingly. This shall not apply where the delay in the satisfaction of the conditions is attributable to the Vendor.
3. The relevant point in time for establishing whether the delivery periods and dates have been complied with shall be the point in time at which the goods were dispatched from the factory or warehouse. Where, through no fault of the Vendor, it is not possible to dispatch the goods on time, the delivery periods and dates shall be deemed to have been complied with upon notification of the readiness for dispatch.
4. In the event of force majeure and other unforeseeable, extraordinary circumstances, such as disruption of operations, strikes, lockouts, lack of means of transport, regulatory interventions, energy supply difficulties, missing or delayed deliveries to the Vendor, etc., the delivery periods agreed upon by the parties shall be extended accordingly, provided that the occurrence of these circumstances is not due to any fault on the part of the Vendor. Should the performance of its contractual obligations be rendered impossible or unreasonable as a result of the aforementioned circumstances, the Vendor shall be released from its performance obligations.
5. Partial deliveries shall be permissible where the Purchaser can make use of these for the intended purpose stipulated in the agreement, the delivery of the rest of the ordered goods is guaranteed and this arrangement does not result in significant additional outlay or additional costs for the Purchaser.
6. Should there be any delay in the Purchaser's acceptance of the delivered goods, or should the Purchaser culpably breach any of his/her/its other duties of co-operation, the Vendor shall, without prejudice to the enforcement by it of any more extensive rights, be entitled to withdraw from

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the agreement and/or bring a claim for payment of lump-sum damages for non-performance in the amount of 1 % per full week of delay or a maximum of 5 % of the total value of the order. Both of the parties to the agreement reserve the right to establish that the damage incurred by the Vendor was either greater or less than the amount claimed.

**V. Retention of Title**

1. All goods delivered shall remain the property of the Vendor (goods subject to the retention of title) until all of its claims arising out of the business relationship with the Purchaser have been settled (extended retention of title).
2. The Purchaser shall be obligated, at its own expense, to store, maintain and repair the goods delivered by the Vendor under retention of title and to insure the same against fire, water damage, burglary and theft.
3. Any adaptation or processing of the goods subject to the retention of title shall be effected on behalf of the Vendor as the manufacturer within the meaning of Section 950 of the BGB, without this giving rise to any obligation on its part. The adapted or processed goods shall be deemed to be goods subject to the retention of title within the meaning of Section V.1. In the event of any processing, combination or amalgamation of the goods subject to the retention of title with other goods by the Purchaser, the Vendor shall have joint ownership of the new item in accordance with the proportion of the amount of the invoice value of the goods subject to the retention of title represented by the invoice value of other goods used. Should the ownership expire as a result of combination or amalgamation, the Purchaser shall transfer to the Vendor the rights of ownership over the new stock or item to which it is entitled in proportion to the invoice value of the goods subject to the retention of title and store these free of charge on behalf of the Vendor. These co-ownership rights shall be deemed to be goods subject to the retention of title within the meaning of Section V.1.
4. The Purchaser may only dispose of the goods subject to the retention of title in the course of his/her/its normal business activities, on his/her/its standard terms and conditions of business and where he/she/it is not in arrears on any of its payments, provided that the receivables arising out of any such resale are transferred to the Vendor pursuant to Section V.5. to 7. He/she/it shall not be entitled to dispose of the goods subject to the retention of title in any other manner.
5. As a precautionary measure, the Purchaser hereby assigns any and all receivables arising out of a resale or on other legal grounds (in particular, the transfer of ownership to the end customer, the occurrence of an insurance event, the commission of an unlawful act) with regard to the goods subject to the retention of title in their entirety to the Vendor. The Vendor hereby accepts the assignment. In the event of the disposal of goods of which the Vendor is joint owner pursuant to Section V.2., a portion of the receivables shall be assigned to the Vendor in proportion to its joint ownership share.
6. The Purchaser shall be entitled to collect on receivables arising out of the resale of the goods. This right to collect on such receivables shall expire in the event of its revocation by the Vendor. The Vendor shall only exercise its right of revocation where it becomes aware of circumstances giving rise to a material deterioration of the Purchaser's solvency which compromises the Vendor's claim for payment. Where the Purchaser acts contrary to the agreement – in particular, where he/she/it falls into arrears on a payment owed to the Vendor –, the Vendor may demand that he/she/it disclose the details of the assignment and furnish it with the necessary information and documents to enable it to collect on the receivable in question.
7. The Purchaser shall immediately inform the Vendor of any seizure of or other interference with the goods subject to the retention of title by third parties. The Purchaser shall bear all the costs which must be paid for reversing such access to or for the return transportation of the goods subject to the retention of title where these are not reimbursed by third parties.

**VI. Delivery**

1. Goods which are notified as being ready for dispatch in accordance with the agreement must be called up without delay, otherwise the Vendor shall be entitled, after issuing a reminder, to dispatch them at the Purchaser's expense and risk or, at its discretion, to store them at the Purchaser's expense and risk, and to immediately invoice the latter accordingly.
2. Should, through no fault of the Vendor, the transportation of the goods in the stipulated manner or to the stipulated location not be possible within the stipulated time frame, the Vendor shall be entitled to deliver the goods in a different manner or to a different location, where the Purchaser may reasonably be expected to accept these changes. Any additional costs arising as a result thereof shall be borne by the Purchaser, however the Purchaser will beforehand be given the opportunity to make a statement in this regard.
3. Deliveries of more or less than the quantities agreed upon by the parties in line with common industry practice shall be permissible.
4. In the case of agreements stipulating continuous deliveries, the Purchaser must specify call-ups and type classifications for more or less identical monthly volumes; otherwise, the Vendor shall be entitled to effect the deliveries at its reasonable discretion, while reasonably taking account of the wishes of the Purchaser. Should individual call-ups as a whole exceed the contractually stipulated volume, the Vendor may – but shall not be obligated to – deliver the additional volume and then invoice the Purchaser for the additional volume at the list prices applicable to the call-up or delivery in question.

**VII. Liability for Material Defects**

1. In the event of the delivery of defective items, the Vendor shall have the choice of effecting subsequent performance by means of rectification of the defect or delivery of non-defective items.
2. The expenditure necessary for the implementation of the subsequent performance, in particular any transport-, work- and material-related costs, shall be borne by the Vendor. Any expenditure arising as a result of the delivery of the goods sold to a location other than the place of performance agreed upon by the parties shall not be borne by the Vendor, unless this is in line with contractual convention.
3. The Vendor shall be entitled to make the subsequent performance owed by it conditional upon the payment by the Purchaser of the outstanding amount of the purchase price. However, the Purchaser shall be entitled to withhold payment of such part of the purchase price which is commensurate with the defect.
4. Should the Purchaser not immediately give the Vendor the opportunity to verify the existence of the material defect and, in particular, does not make the goods which are the subject of the complaint, or samples thereof, available to the Vendor upon the latter's request and upon the expiration of an appropriate grace period, the Vendor shall not be deemed to be in default on its obligation to effect subsequent performance. Should the effecting of subsequent performance be thwarted for reasons for which the Purchaser is responsible, in particular as a result of the Purchaser itself effecting subsequent performance, all of its rights with regard to the material defect shall expire.

**GENERAL TERMS AND CONDITIONS OF SALE of Bomat Heiztechnik GmbH**  
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5. Should the defect be due to a defective third-party product, the Vendor shall be entitled to assign its warranty claims against its sub-supplier to the Purchaser. In such a case, warranty claims may only be brought against the Vendor once the Purchaser has asserted the assigned claims against the sub-supplier before the courts.
6. The limitation period for the bringing of claims on grounds of defective goods pursuant to Section 438 para 1 no. 3 of the BGB – except in the case of fraudulent intent and subject to Section VIII.4. – shall be one year, commencing from the date of the delivery or, where acceptance is required, upon acceptance.

**VIII. General Limitation of Liability**

1. The Vendor shall be liable for breaches of contractual and non-contractual obligations vis-à-vis the Purchaser – also those committed by its executive employees and other agents – in cases of wilful intent and gross negligence.
2. The Vendor shall be liable for damage arising as a result of the breach of material contractual obligations, i.e. contractual obligations the fulfilment of which is central to and in fact enables the proper implementation of the agreement, and upon whose fulfilment the other party to the agreement generally relies and is entitled to rely, even in cases of simple negligence.
3. To the extent that the Vendor is not guilty of any intentional misconduct in the cases stipulated in Section VIII.1. and VIII.2., it shall only be liable to pay compensation for typically occurring damage which it would have foreseen, upon the conclusion the agreement, as a possible consequence of a contractual breach or which it should have foreseen upon the exercise of due care and attention.
4. The Vendor's liability, also for damages due to defects and consequences of defects, shall otherwise be excluded.
5. The aforementioned limitations of liability do not apply in culpably caused harm to life, body and health, even if and insofar as the Vendor has assumed a guarantee for the consistency of the sold object, as well as in cases of mandatory liability according to product liability laws.
6. Insofar as the Vendor's liability is excluded or limited, this shall also apply to the personal liability of his employees, legal representatives and vicarious agents.
7. Claims for damages pursuant to the foregoing Section VIII.1. to VIII.6. shall become time-barred upon the expiration of the statutory limitation periods.

**IX. Provision of Information and Technical Advice**

The giving of information and recommendations by the Vendor shall be without obligation and under exclusion of all liability, unless the Vendor expressly undertakes in writing to give such information or recommendations. The Purchaser must ascertain, by conducting a series of its/his/her own tests, whether a product is actually suitable for his/her/its specific purposes. Information provided by the Vendor shall also not constitute a warranty as to the quality or characteristics of its products.

**X. Place of Performance, Place of Jurisdiction and Applicable Law**

1. Unless otherwise agreed, the place of performance for all obligations of both parties to the agreement shall be the location of the registered office of the Vendor.
2. The place of jurisdiction shall be Überlingen (Federal Republic of Germany). Moreover, the Vendor shall be entitled to also bring an action against the Purchaser at the location of the latter's registered office.
3. This agreement shall be subject to German law to the exclusion of the UN Convention on Contracts for the International sale of Goods (CISG).