

# Annex-C

general terms and conditions of business



This annex is always part of a detailed offer for a bauku extrusion line and is just valid in combination with this offer.

## **Attention:**

Please note that the information in this annex is a general one and that the detailed offer for the customer may mention different commercial explanations. These special paragraphs have to be pointed out clearly in the text of the offer. For all commercial details which are not mentioned in the offer text, this annex is binding.

### general terms and conditions of delivery and sale

Deliveries of goods and the provision of services by us will be made exclusively on the basis of the following terms and conditions of delivery and sale, which will be recognized by issuing the order or accepting the delivery or services. Terms and conditions of the customer which deviate from our terms and conditions will not be deemed part of the contract even if we do not separately object to them. Such terms and conditions are herewith objected.

#### **1. offer and conclusion of a contract**

**1.1** Our offers are not binding. They merely constitute an invitation to the customer to submit an order proposal. The customer shall be bound by the order proposal issued by him for 14 days if this is based on a request made by us to him in writing asking for submission of an order proposal or for 28 days if it is not based on a request made by us to him in writing.

**1.2** The contract will only be concluded through a written order confirmation on our part. Verbal agreements must be confirmed in writing in order to be valid. Understandings reached with our commercial employees or agents, in the event of them not having authorization to represent, must be confirmed by us.

**1.3** Documents and objects supplied by the customer (information, drawings, moulds, samples, models or similar items) shall be relevant for us. The customer shall be liable for the correctness of their contents, their technical feasibility and completeness. We shall not be obliged to investigate this. The customer shall also be liable for ensuring that the use of such documentation and objects does not violate the rights of third parties and shall ensure that we are kept free from claims and/or indemnified in respect of any detriment which will arise through such a violation of rights.

**1.4** We shall retain the title and copyright to documentation prepared or supplied by us, cost estimations and similar items. They shall not be made available to third parties. If a contract is not concluded, these objects must be returned to us immediately.

#### **2. scope of the obligation to perform a contract**

**2.1** Our written order confirmation shall be binding for the subject matter of our delivery or the performance of our services. Our information on the subject-matter of our delivery or services (e.g. weights, dimensions, use values, load capability, tolerances, condition and quality, durability, technical data) as well as our representation of the same (e.g. drawings and diagrams) are only approximately binding insofar as the utilisation for the contractually envisaged purpose does not require precise coordination. Unless expressly otherwise agreed upon from case to case, this information does not represent an assurance, guarantee of characteristics, condition and quality, durability or any other guarantee but only serves to describe or label the delivery or service. Commercial deviations and deviations that are caused by legal regulations or represent technical improvements as well as the utilisation of other components, designs or materials of the same quality are – without consulting the customer – permitted insofar as this does not hamper the utilisation for the contractually envisaged purpose.

**2.2** The above applies accordingly to information included in our catalogues, brochures or advertising material relating to the size, weight, condition and quality, durability, performance as well as shipment weights, dimensions of packing cases and similar specifications insofar as they are specifications on condition and quality in the individual case. Information furnished in the order confirmation always has priority.

**2.3** The regulations of the VDE 8 Association of German Electrical Engineers) shall apply to electrical materials. Variations are permitted, as long as the same degree of safety is assured by some other means.

**2.4** Safety guards (with exception of the fencing-off of the danger area in the case of robots) will be supplied, provided this is prescribed by law or is specifically agreed. The costs connected with such equipment are not included in the price, unless stated otherwise in the order confirmation. The customer is obliged in such cases to inform us in good time of the relevant regulations valid at the place of installation.

**2.5** The customer shall always be responsible for observing the regulations with regard to occupational safety, environmental protection and accident prevention valid at the place of installation.

#### **3. prices and payment**

**3.1.1** Unless otherwise agreed, prices are ex works for the scope of supplies and services contained in the order confirmation, but exclude statutory VAT, loading and packing. Loading and packing shall be calculated at the total production cost.

**3.1.2** All costs incurred through transport, including insurance, shall be borne by the customer. The customer shall also be responsible for own account for approvals from authorities, such as import approvals etc.

**3.1.3** All taxes, charges and other duties to be paid outside the Federal Republic of Germany shall be borne by the customer. When delivering to another country within the European Community, we require the value added tax identification number of the customer and written confirmation of receipt of the merchandise for delivery. In case of this information and/or documents not being furnished, we are entitled to charge the value added applicable in the Federal Republic of Germany tax in the relevant applicable amount.

**3.2** Unless otherwise agreed, payment is to be made in cash without any deductions, free of charge, at our receiving agents. In the case of machinery and accessories, payments shall be made as follows: one-third on receipt of the order confirmation, one-third on delivery or as soon as the customer has been informed that the main parts are ready for delivery, and the balance within one month of receipt of invoice. In the case of tools, half of the total price shall be due for payment on receipt of the order confirmation and the balance on delivery. Spare parts and other services shall be payable within seven days of receipt of invoice.

**3.3** In the case of export deliveries (all deliveries to countries outside the Federal Republic of Germany), payment shall be made by means of an irrevocable, confirmed letter of credit in favour of our bankers, with an adequate term.

**3.4** Cheques can be accepted on account of performance, and also bills of exchange provided this has been agreed in advance. Discounting and collection charges shall be borne by the customer. When granting a payment term, the date of payments shall be the date on which we are able to dispose of the funds on our business account.

**3.5** If the customer is partially or totally in arrears with his payment, he must pay us, from that time onwards, interest on the arrears at the statutory rate, without prejudice to our other rights. This does not exclude the assertion of a further damage claim.

**3.6** If after signing the contract it becomes evident to us that our claim to counter service is jeopardised due to poor performance on the part of the customer (in particular if the customer is partially or totally in arrears with his payment, if distraint is levied against the customer's property, if the customer ceases to make further payments or if he requests a settlement with creditors or a respite of payment, we are entitled to implement outstanding supplies from the contract or from other contracts only upon down payment or provision of collateral in the amount of said outstanding payment claim – even if bills of exchange were taken for this purpose. Should the customer fail to meet the request for down payment or provision of collateral after an appropriate period of grace, we are entitled to terminate the contract and to claim damages.

**3.7** The retention of payments by the customer or the set-off of counterclaims by the customer shall only be permitted if the counterclaims are deemed indisputable or legally valid.

#### 4. delay and impossibility

**4.1** Periods and dates for supplies and services shall apply always approximately, unless a fixed delivery period or a fixed delivery date has been agreed upon. When arranging the delivery period, this shall commence with the date of the order confirmation, but not before receipt of the documentation to be made available by the customer (e.g. information, drawings, approvals, moulds, samples, models) and any releases to be declared by the customer and the first payment instalment according section 3.2 to be effected by the customer. The delivery period is extended by the period in which the customer fails to fulfil his obligations towards us. This shall not affect our rights arising from delay on the part of the customer.

**4.2** A fixed date is also postponed under the same conditions under which a delivery period commences later or is extended.

**4.3** Delivery periods shall be regarded as having been adhered to when delivery has taken place before the expiry of the delivery period. If the customer has to collect the supplied item, delivery periods and delivery dates are deemed honoured with the notification of readiness for shipment to the customer.

**4.4** If the customer suffers detriment as a result of a delay on our part, he will be entitled to claim a lump sum compensation for default. The compensation for default shall amount to ½ % for each full week of the delay, commencing after a grace period of two months, but not exceeding, in all 5 % of the value of that part of the total delivery which cannot be used in time or in accordance with the contract as a result of the delay. Furthermore, the customer is entitled to claims for damages only subject to section 7. Section 4.6.5 shall not be affected.

**4.5** If dispatch or acceptance is delayed for reasons attributable to the customer, he will be charged with all the costs connected with storing the item in our factory, commencing one month after we have notified him that the item was ready for delivery, with a minimum charge of ½ % of the price according section 3.1.1 for each month. We are, however, entitled, after setting an appropriate term, which has expired without success, to dispose of the object supply in another way. In such case, the delivery period begins anew. We reserve the right to assert, and to provide evidence of, higher or lower storage costs.

**4.6.1** In the event of force majeure and other disrupting events which could not be foreseen at the time of signing the contract (e.g. operating faults of all types, delays in transport, strikes, legally valid lock-outs, measures introduced by authorities, difficulties in procuring material or energy, unfavourable weather conditions as well as non-supply, incorrect supply or delay supply by our suppliers) for which we are not responsible and which render the supply significantly more difficult or impossible, we are entitled to withdraw from the contract if the disrupting event is not of temporary duration and we have expressly assumed a procurement risk. In the event of withdrawal from the contract, counter-performance rendered must be returned forthwith § 275, section 2 of the German Civil Code remains unaffected.

**4.6.2** In the event of disrupting events of a temporary duration – also within a deferred delivery – the delivery period shall be extended or the delivery date postponed by the duration of the disturbance and an additional appropriate preparatory time.

**4.6.3** We shall inform the customer forthwith of the occurrence of a disrupting event. The customer can require us to inform him whether we want to deliver within an appropriate term or whether we want to withdraw.

**4.6.4** In the event that the customer cannot be expected to accept the delivery as a result of delay, he can withdraw from the contract by immediately submitting to us a written statement to this effect.

**4.6.5** Damage claims are excluded in the cases mentioned in section 4.6.

**4.7** Should we delay the rendering of our services, the customer shall in all cases undertake to grant us an appropriate period of grace for the rendering of services. Should we fail to observe this period of grace, the customer is entitled to withdraw from the contract. In the event that the customer cannot be expected to accept the delivery as a result of the delay, he can withdraw from the contract without granting a period of grace by forthwith submitting to us a written statement to this effect. In the event of partial delay, the customer can withdraw from the entire contract only if he has a justified interest in refusing a partial delivery. Otherwise, the customer can reduce the price accordingly.

**4.8** Should the rendering of a delivery or service become impossible regardless of the reasons for such an occurrence, the customer is entitled to damage claims only according to the provisions under section 7. Section 4.6.6 shall not be affected.

#### 5. passing of the risk and dispatch

**5.1** The risk passes to the customer with the hand-over of the items to be delivered to the forwarding agent or carrier or to the party otherwise responsible for dispatch at the latest when the items to be delivered leave our works or warehouse. This also applies if partial deliveries are made or if we have taken over other obligations, such as dispatch costs or transportation and installation. The delivery can be insured by us at the request and expense of the customer to the extent desired.

**5.2** If delivery is delayed because of circumstances for which we are not responsible or which are attributable to the customer, the risk passes to the customer with the ready-for-shipment note, however, obliged to take out the insurance at the customer's request and expense to the extent required by him. If this is not required, we are entitled to insure the object of supply from the time of the passing of the risk, at expense of the customer.

**5.3** Immediately upon arrival of the delivered items, the customer must accept and unload said items regardless of their condition on arrival.

**5.4** We are entitled to make partial deliveries and early deliveries to the degree that this is reasonable.

**5.5** The returning of goods and empties for any reason shall take place at the customer's own risk and, subject to section 6.33, sentence 2., for his account.

#### 6. warranty

Claims and rights of the customer due to defects of any kind shall be based on the following provisions and shall otherwise be excluded.

**6.1** The objects of supply must be examined carefully by the customer immediately upon arrival. In the event of visible defects, the customer must have these confirmed by carrier. The delivery is considered approved if a written notification of defects is not submitted within 2 weeks after arrival of the delivery or, if the defects were not able to be recognized upon immediate careful examination, within 2 weeks after the defects have been discovered.

**6.2** We shall only be liable for defects in the object of supply to the extent that these arise in the course of its proper use and under the operating conditions prescribed by us for the goods and on account of circumstances occurring before the passing of the risk, in particular faulty construction or poor execution. Other defects arising from, for example, natural wear, improper treatment, unauthorized changes and repairs or poor installation of the object of supply are excluded from liability, provided that the defect is not attributable to us.

**6.3.1** In the event of defects in the object of supply, the customer must grant us an adequate period of grace to subsequently perform our contractual obligations. We are obliged to subsequently perform our obligations according to our choice, i.e. to eliminate the defect or to deliver an item free of defect, provided the costs thereof are not disproportionately high.

**6.3.2** Subsequent performance, according to our choice, will take place by rectifying parts which can still be used or parts where usability has not been considerably hampered or by replacing unusable parts or parts where usability has become significantly restricted. The replaced parts will become our property. From the expenses caused directly by the rectification or the replacement delivery, we shall assume costs of the replacement part, including transport charges as well as appropriate costs of dismantling and reassembly. We shall assume responsibility for the provision of our engineers and assistants that may be required, provided that this can be equitably requested.

**6.3.3** At our request, the rejected object of supply must be returned to us carriage paid. In the event of justified notification of defects, we shall reimburse the costs for the cheapest mode of dispatch. This shall not apply if the costs increase because the object of supply is at a different location than the one covered by the commercial warranty of the customer unless the move to a different place is in accordance with the intended use of the object of supply.

**6.3.4** If the complaint is not justified, the customer will bear all the ensuing costs.

**6.3.5** If we refuse both types of subsequent performance or if subsequent performance is unacceptable to the customer or should our subsequent performance fail, the customer can reduce the price or withdraw from the contract. The right to terminate the contract, subject to section 6.5, only exists if the violation of our obligations is considerable, in particular if there are severe defects which rule out or considerably hamper the use stipulated in the contract.

**6.4** The customer must grant us the time and opportunity required, as appears fair, to carry out the necessary repairs and deliveries of replacements. The customer shall have the right to have the defect rectified by himself or by third parties appointed by him, and to demand reimbursement from us of the necessary costs, only in urgent cases where his operational safety is at risk and in order to prevent disproportional damage, whereby we are to be informed immediately.

**6.5** The right to terminate the contract due to an existing violation of an obligation attributable to us which does not relate to a defect in the purchased item, and the liability for personal damage and the liability for other damage brought about with fully or by negligence shall not be affected by section 6. However, we shall be liable only in accordance with section 7 with regard to compensation for damage due to or concerning defects in the supplied item and reimbursement of the futile expenses.

**6.6** The above regulations shall apply correspondingly if repairs or replacement parts are defective.

**6.7** If the object of supply is not an item which has been newly manufactured, all warranty claims shall be excluded.

## **7. liability and damage claims**

Our liability with regard to compensation for damage and the reimbursement of futile expenses, for whatever legal reason (e.g. due to negligence in contracting, due to consequential damage caused by defects, due to infringement of contractual or statutory collateral obligations, due to infringement of an obligation arising from contractual obligation, particularly impossibility, delay, defective or wrong supply, or due to tort) is excluded or restricted according to the following provisions:

**7.1** Provided that no infringement of essential contractual obligations is involved, we shall not be liable – subject to section 7.2

**7.1.1** In the case of simple negligence by our bodies, legal agents, employees or other persons in performing our obligations

**7.1.2** In the case of gross negligence by our non-managerial employees or other persons employed in performing our obligations

**7.2** In the case of simple negligence, we shall be liable insofar as we have provided cover for the damage by means of product liability insurance or liability insurance.

**7.3** Insofar as we are liable under the terms of 7.1, this liability is, however, excluded in the following cases, even where an infringement of essential contractual obligations is involved:

**7.3.1** For unforeseeable damage which is not typical of the contract;

**7.3.2** If, in the branch of industry in which the customer is active, the risk that is the cause of the damage that has occurred is usually insured by the customer or if it is customary in the branch for comprehensive insurance to be taken out for the damaged goods;

**7.3.3** For claims for compensation collateral to or instead of the service provided, insofar as compensation for indirect or consequential damage is demanded;

**7.3.4** For damage which can be controlled by the customer. These executions are not valid in the case of liability due to gross negligence or deliberate actions by our bodies, legal agents or managerial employees. Section 7.2 remains unaffected.

**7.4** Statutory claims arising from product liability legislation and due to personal injury remain unaffected.

## **8. statutory limitation, liability for breach of warranty, fraudulent intent**

**8.1** The statutory limitation period for claims arising from defects is, for newly manufactured goods, one year for a daily operating period of up to eight hours and six months for longer operating periods. The statutory limitation period commences upon delivery. The statutory provisions relating to limitation are valid for claims according to section 7.4 and for claims for compensation due to tort.

**8.2** Claims by the customer shall remain unaffected by the provisions of sections 6, 7, and 8.1 if we have fraudulently concealed a defect or if we have accepted a guarantee. Properties, condition and quality or durability of an object of supply, or other circumstances, shall only be considered as guaranteed if a guarantee has been expressly issued. The content of the promise of guarantee is authoritative as regards the scope of liability for breach of warranty. In all cases, we shall be liable only for such damage which is actually intended to be prevented by the guarantee.

## **9. retention of title**

**9.1** All items supplied by us (reserved goods) continue to be our property until all amounts due to us from the business relation, including those that will only arise at a later date, have been settled in full. Retention of title will also continue to be effective if we integrate individual amounts due into a current invoice and the balance is drawn and recognized.

**9.2** The same shall apply in the case of export deliveries (section 3.3). If the statutory regulations in force in the country of destination do not allow retention of title in the form described above, the customer shall promise to provide us with equivalent securities in respect of all amounts owing by him to us.

**9.3.1** Insofar as the object of supply is subject to our retention of title, the customer is not entitled to dispose of the object nor to pledge it nor to assign it by way of security without prior approval. If we have given our approval, the customer must declare the retention of title to the third party. In all cases, he may only dispose of the object, pledge it or assign it by way of security if he upholds our retention of title. The approval may be made contingent on further conditions which serve to safeguard our security interest.

**9.3.2** If the items supplied by us are to be assigned on the conclusion of the contract, with our consent, to a third party who is financing on behalf of the customer the price payable to us through the provision of a loan or some other means, in order to secure the financing, the customer shall hereby transfer to us his expectancy based on the property right to the object of supply in case not all amounts due to us by the customer have been paid at the point in time of the release of the equitable lien by the third party who is providing the financing. When release is made, the object of supply will once again fall under our retention of title.

**9.4** The customer shall be obliged to participate in measures which we undertake in order to protect our title or an equivalent right in place of this in respect of the object of supply. He must inform us immediately of attachments, seizures or other dispositions by third parties and send us copies of the relevant documents.

**9.5** We are entitled to insure the object of supply at the expense of the customer against theft, breakage, fire, water and other damage for the period of our retention of title if the customer does not himself take out such insurance and provide us with proof of this at the time of the passing of risk, primarily by submitting the insurance policy. If the customer has taken out self-insurance, we are entitled to make inquiries of the insurance company to make sure that adequate cover has been taken out. The customer shall authorise us to obtain the requisite information from the insurer of the object of supply in order to check the cover. This shall apply for the duration of our retention of title. To this end, the customer shall discharge the insurer from any obligation to secrecy which the insurer may have undertaken.



**9.6** If the customer is in breach of contract, in particular in default of payment, we are entitled to withdraw from the contract and take back the reserved goods after issuing formal notice and teller of warning, and the customer is obliged to hand the goods over.

**9.7** After taking back the goods, we are authorized to realize their sale, whereupon the proceeds shall be offset against the customer's liabilities subject to deduction of reasonable realization costs.

**9.8** Should the customer process, combine or mix the reserved goods with other goods which do not belong to us, we shall be entitled to co-ownership of the new goods thus formed according to the ratio between the price of the reserved goods and the sum of the value of the other goods utilised.

**10. place of performance, place of jurisdiction, applicable law, partial invalidity**

**10.1** These terms and conditions of delivery and sale are valid only in respect of their application towards companies. The resale of the objects to consumers is not envisaged.

**10.2** All obligations arising under this contractual relationship have to be fulfilled at the place of our head office.

**10.3** The place of jurisdiction for all litigation arising from this contractual relationship and concerning its creation and validity, including actions relating to cheques or bills of exchange, is the court which is competent for the place of our head office. However, we expressly reserve the right bring actions at any other justifiable place of jurisdiction, such as at the place of the customer's head office.

**10.4** The contractual relationship is subject to the 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. The revised 2000 version of the INCOTERMS and the Rules for the Uniform Interpretation of Contractual Terms of the International Chamber of Commerce in Paris shall be applicable supplementary to our terms and conditions of delivery and sale.

**10.5** If individual clauses of these terms and conditions of delivery and sale are invalid, this shall not affect the validity of the contract as a whole or the remaining terms and conditions thereof. The parties to the contract are obliged to produce a provision in place of the invalid condition which approaches as closely as possible the commercial intention of the invalid condition.

