

► **General Conditions of Supply and Delivery for the export of machinery, apparatus and equipment**



1.1 Unless otherwise stipulated in writing, the following *General Conditions of Supply and Delivery* will apply. If BMA undertakes the erection or its supervision, the *Conditions for erection work abroad* of BMA will apply in addition to the said *General Conditions of Supply and Delivery*.

2.1 The conclusion or modification of a supply contract will become effective only after written confirmation by BMA. In the event of such written confirmation containing any extensions, limitations or other modifications as compared with the order, the buyer will be deemed to have given his consent unless he lodges a written objection without delay.

2.2 All technical data are to be understood with the usual tolerances. Design and construction of the machinery, apparatus and equipment will be subject to the standards effective in the Federal Republic of Germany. BMA reserves the right to make such modifications as may be required by the definite design, by local conditions, or as a result of new technical knowledge. All drawings, technical documents or other technical information submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party and shall not, without the written consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the written consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

3.1 All duties, taxes, tax penalties or other dues arising in connection with the performance or execution of the contractually stipulated deliveries and services outside of the Federal Republic of Germany will be borne by the buyer. Furthermore, the buyer will furnish all necessary notifications, information, and any other statements to be made to the competent authorities outside of the Federal Republic of Germany, also in cases where this would have to be done by BMA under foreign laws or regulations.

4.1 The date of delivery will follow from the written confirmation of BMA. Observance of the term of delivery presupposes that the buyer fulfils his contractual obligations.

4.2 Observance of the date of delivery further presupposes that the buyer will obtain a required import licence in good time and communicate the serial number, date, and period of validity thereof to BMA, and that agreement will be reached in time on all technical questions, the clarification of which the contracting parties have reserved for subsequent negotiations when concluding the contract.

4.3 The term of delivery will be deemed as having been observed if, up to its expiry, the goods to be delivered have left the works, or if their readiness for shipment has been reported to the buyer. BMA is entitled to make partial deliveries.

4.4 In the event of delivery by BMA being delayed, the buyer is entitled to liquidated damages from the date on which delivery should have taken place, unless the circumstances prove that he has not suffered any loss. This indemnity will be 0.5 % for every complete week of delay, but not more than 5 % of the value of the part of the total consignment which cannot be used timely or expeditiously as a result of such delay. All further claims for damages because of delayed delivery will be excluded, except where BMA has been guilty of a negligent breach of a condition which goes to the root of the contract („wesentliche Vertragspflichten“), intent or gross negligence.

5.1 The conditions of payment will follow from the written confirmation of BMA. The buyer will not be entitled to withhold the agreed payments or set them off against any counterclaims he may hold on BMA, unless the counterclaims are undisputed or non-appealable. All payments by the buyer will be deemed as having been effected only after they have been credited to BMA on a German banking account without deduction of any bank charges arising abroad.

5.2 If a time for payment has been specified by reference to the calendar, the buyer will be in default without a reminder if he fails to pay at the specified time. For delayed payments the buyer will pay interest for default from the due date. The rate will be 8 % p.a. over the basis interest rate according to § 247 BGB.

5.3 BMA reserves ownership of the supplied goods pending receipt of all payments under the contract. If the laws in force in that country where the goods are should not allow such reservation of ownership but similar rights instead, BMA reserves such rights. The buyer shall be obliged to assist the seller in enforcing these rights.

6.1 Pursuant to the following provisions of Article 6, para 2-9 inclusive, BMA shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials, or workmanship. Safety devices against hazards when using the supplied article will be included in the shipment insofar as this has been agreed; beyond that limit, their absence does not constitute a defect.

6.2 The above liability applies only to deficiencies arising within 12 months regardless of the actual operating time (warranty period), if reported to BMA immediately by the buyer. The warranty period will be reckoned from the day on which the supplied article is put into operation or use. Where the shipment, erection, or putting into operation is delayed because of reasons for which BMA is not answerable, the warranty period ends not later than 18 months after the day of readiness for shipment of the article to be supplied.

6.3 The buyer must afford BMA the time and opportunity required to examine any reported defects and to remedy them within a reasonable period. It is for BMA to decide whether the defect is to be made good by repair at the place of erection and/or at the supplying works, or by replacement. In the event that, as a result of such decision, the repair is carried out at the place of erection with the assistance of BMA specialists, BMA will bear the cost for their attendance. Replaced defective components will be at the disposal of BMA.

6.4 If, within a reasonable time, BMA does not fulfil the above mentioned obligations, the buyer may by notice in writing fix a final time for completion of BMA's obligations. If BMA fails to fulfil its obligations within such final time, the buyer may carry out the necessary remedial works with due care. In such cases BMA will refund the actual, substantiated expenses to the buyer to the extent stipulated in Article 6, para 3.

6.5 Where the defect has not been successfully remedied as stipulated in Article 6, para 4, the buyer is entitled to a reduction of the contract price in proportion to the reduced value of the supplied goods, provided that under no circumstance shall such reduction exceed 5% of the contract price, or where the defect is so substantial as to significantly deprive the buyer of the benefit of the contract, the buyer may terminate the contract by notice in writing to BMA. The Buyer is then entitled to compensation for the loss he has suffered up to a maximum of 0,1% of the contract price.

6.6 The liability of BMA does not cover any defects caused by material supplied or prescribed by the buyer, or resulting from a design prescribed by the buyer.

6.7 The liability of BMA extends only to defects arising under the contractually stipulated operating conditions and during regular use. It does not extend to defects originating after the transfer of risk. In particular, it does not cover any defect resulting from: inadequate storage and maintenance, inexpert transport and erection by the buyer, irregular operation, modifications without the written consent of BMA, poor repair by the buyer, fair wear and tear, overloading, accidents, unsuitable requisites for operation, defective foundation or unsuitable foundation soil, chemical, electro-chemical, or electrical influences, effects of climatic and other natural phenomena.

6.8 Observance of the liabilities resulting from Article 6 presupposes that the buyer fulfils his contractual obligations.

6.9 Save as stipulated in Article 6 para 1-8, BMA shall not be liable for defects. This applies to any loss the defect may cause, including loss of production, loss of profit and other indirect loss. This limitation of BMA's liability shall not apply in the cases as defined under Article 8.1.

7.1 Neither BMA nor any company affiliated with it, makes any warranties, representations, guarantees, or promises, express or implied, as to the quality or performance of the supplied article, or any part thereof, other than those set forth in Article 6 above.

8.1 In no event will BMA be liable for incidental or consequential damages or injuries, including, but not limited to, losses in production, loss of profits, or other commercial loss. This exclusion of liability shall not apply in the case of intent or gross negligence by BMA or if BMA negligently causes damage to life, body or health. Furthermore, the exclusion of liability shall not apply in cases of negligent breach of a condition which goes to the root of the contract („wesentliche Vertragspflichten“). In the case of slight negligence, BMA shall be liable only for reasonably foreseeable damage which is intrinsic to the contract. Nor shall the exclusion of liability apply in the cases of strict liability under the Product Liability Act („Produkthaftungsgesetz“) for defects of the Product causing death or personal injury, or damage to items of property used privately. Neither does the said exclusion apply in the case of defects BMA has fraudulently concealed or whose absence BMA has guaranteed.

9.1 In the event that the performance of the deliveries and services is made impossible for BMA by war, civil commotion, strike, lockout, epidemics, earthquakes, fire, windstorm or flood, impediments of transport or transportation damage, or any other circumstances outside of BMA's control, BMA will be exonerated from the deliveries and services for the duration of the effects of such impediments. BMA is liable to inform the buyer immediately upon occurrence of a case of force majeure and to substantiate the existence thereof at the buyer's request.

10.1 All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules.

10.2 The supply contract will be governed by substantive German law; the International Rules for the Interpretation of Trade Terms (Incoterms) published by the International Chamber of Commerce will apply.