General Terms and Conditions of Supply and Service of Baumann GmbH

I. General

(1) Material and personal scope of application

The Terms & Conditions set out below apply to all our supplies and services as well as all our retrofitting, repair, maintenance and other services (including any ancillary services such as e.g. proposals, planning assistance services, consulting services) provided to entrepreneurs as defined by Article 14 of the German Civil Code (BGB), or to entities incorporated under (German) public law, or to any specialized agencies subject to (German) public law. They do not apply to any legal relationships with consumers as defined by Article 13 of the German Civil Code (BGB).

(2) Exclusion of third-party terms and conditions

Any of the Buyer's terms and conditions which are adverse to or deviate from our Terms & Conditions of supply and service are herewith expressly rejected. The Buyer's terms and conditions shall not be binding upon us even in cases where we do not expressly reject them after receipt. Our Terms & Conditions shall be deemed accepted at award of the purchase order and/or at receipt of the confirmation of purchase order, but in any event not later than at the time of receipt of our supply or service.

(3) Validity

Should any of the provisions contained herein be or become invalid or unenforceable, the validity of the remaining provisions of these General Terms & Conditions of Supply and Service shall remain unaffected. Any invalid or unenforceable provision shall be deemed replaced by a valid provision which most closely approximates the economic intentions and requirements of the original provision.

(4) Written form

Any deviations from the following Terms & Conditions and any other amendments or additions to the purchase order require our written confirmation to be effective. The same applies to any rescission or revocation of this written form requirement.

(5) Copyright

Property rights and copyrights are held in all illustrations, drawings, calculations and other documents. The Buyer shall be obliged obtain our express written consent before disclosing or passing them on to third parties.

II. Purchase order

(1) Written confirmation of orders

Our quotations remain legally non-binding until our written confirmation of a Buyer's purchase order awarded to us on the basis of our quotation. Every purchase order must be confirmed by us in writing in order to be accepted as legally binding. In cases of deliveries made without a written confirmation our invoice shall simultaneously be deemed as confirmation of purchase order.

(2) Purchase order content

The content of purchase orders shall be deemed limited exclusively to the technical specifications of the supplies and services ordered by the Buyer in accordance with our quotations and our confirmations of purchase orders as confirmed by us in writing. The right to professionally competent technical or design-specific amendments to the supplies or services ordered is reserved insofar as the technical function, the normal usage, or the value of supplies or services remains unaffected or is only marginally affected.

(3) Technical data

The technical data specified in our quotations, drawings and illustrations are merely approximate values unless expressly identified in writing as binding and accompanied by tolerance specifications. Furthermore, our services and supplies are governed exclusively by the relevant German technical acceptance specifications and safety regulations.
III. Obligation to supply and obligation to provide indemnification

1. Reservation of timely self-supply

Our own obligation to supply and our obligation to provide indemnification shall be contingent upon the timely and correct supply of the required goods and materials to us. In the event of a permanent incapacitation resulting from circumstances beyond our control, notably force majeure, strike, lockout, import and export bans, transport obstructions, interventions by government authorities or the like, we shall be entitled to withdraw from the contract without any obligation to pay compensation for damages. In cases of major changes in our suppliers’ ability to supply and perform or their pricing or the quality of the goods received from our suppliers or the services provided by other third parties which are crucial for the due execution of the purchase order awarded to us we shall also be entitled to withdraw from the contract without any obligation to pay compensation for damages.

2. Partial delivery

Partial deliveries shall be admissible and shall be deemed as separate, independent deliveries for payment and claims purposes.

3. Material deterioration of Buyer’s financial situation

If the Buyer’s financial and/or solvency situation deteriorates substantially after conclusion of the contract, or if such circumstances, which already existed before the conclusion of the contract, become known only after the said conclusion, we shall be entitled, at our discretion, to either withdraw from the contract or to demand immediate cash payment of all outstanding invoices even if respite had previously been granted in full or in part on the invoiced amounts or if the invoiced amounts had been remitted by bills of exchange. Such cases of deterioration shall be deemed to include notably poorer credit ratings by a credit agency, protested bills of exchange or returned checks, forfeitures, cessation of payment (default), institution of insolvency proceedings, or dismissal of insolvency proceedings due to lack of assets. In the event we elect not to withdraw from the contract in spite of a deterioration of the Buyer’s financial situation, our deliveries will be made concurrently against payment of the purchase price, whereas deliveries for major purchase orders will be made only against cash in advance.

IV. Delivery deadline/delivery period

1. General provisions on delivery deadlines/delivery periods

Unless otherwise agreed, any information given by us on delivery deadlines or delivery periods in our quotations shall be deemed as provisional and non-binding estimative dates for the time being. In cases where as binding delivery deadlines and delivery periods were agreed, these shall be deemed appropriately extended in cases where they cannot be met as a result of circumstances beyond our control. In view of the technical complexity of the supplies and services, a six-week extension period shall generally be deemed appropriate unless shorter or longer periods are considered appropriate or mutually agreed on a case-by-case basis and with due consideration of the parties’ mutual interests. Delivery periods shall be deemed to commence on the date of our written confirmation of order, however, not before clarification of all details of execution and all other prerequisites to be met by the Customer for the due and proper fulfillment of the contract. The same shall apply mutatis mutandis to delivery deadlines.

2. Fixed-date transactions

The agreement of fixed deadlines or fixed delivery periods must be expressly identified as a fixed-date transaction and shall be deemed legally binding only if agreed in writing.

3. Buyer’s duty to cooperate

The Buyer shall be obliged to make available to us, either on award of the purchase order but no later than immediately following the award of the purchase order, any and all data, documents, and other parameters required for the execution of the contract. In cases where the subject matter of the purchase order comprises retrofitting, repair, maintenance and/or other services, it shall be the Buyer’s duty to accurately record the technical condition of the machine or plant to be overhauled or repaired by us, and to advise us beforehand in writing of all subassemblies related to the services provided by us. The Buyer shall be obliged to make available all data, documents and other parameters required for the execution of the contract either together with the purchase order or at the latest following award of the purchase order. In the event of untimely receipt of such documents and data, the Buyer shall not be entitled to invoke compliance with delivery deadlines or delivery periods. In such a case the right to
claim damages due to delay shall be excluded. The delivery deadline of the delivery period shall in such a case be deemed as appropriately extended.

V. Passing of risk

(1) Passing of risk at dispatch

Unless the validity of a specific delivery clause from INCOTERMS 2010 was expressly agreed in writing with the Buyer, the risk of loss and/or deterioration of the objects of the contract shall pass to the Buyer once the objects of the contract have left our factory. This shall also apply in cases where the goods are shipped a tour expense or using our means of transportation. Shipment will in all cases be at the Buyer’s risk, even in cases where prepaid delivery was agreed.

(2) Passing of risk at notification of readiness for shipment

If the shipment is delayed either at the Buyer’s request or for reasons beyond our control, the risk shall pass to the Buyer on notification if readiness for shipment.

VI. Prices

(1) General pricing conditions

Our prices are quoted ex works plus packaging and statutory VAT. The agreement of fixed prices is subject to an express written confirmation. Unless otherwise agreed, our prices for all deliveries are generally quoted in Euros, including any deliveries made outside the European Monetary Union.

(2) Packaging and packaging materials

The costs for packaging and packaging materials shall be borne by the Buyer. Packaging and packaging materials will be taken back by us. The costs for return transportation shall be borne by the Buyer. For deliveries outside German, the return of packaging of any nature shall be excluded.

VII. Terms of payment

(1) Payment deadlines

Unless otherwise agreed, all invoiced amounts shall be due for payment within 14 days of the invoice date without deductions.

(2) Default interest

In the event of Buyer’s default in payment, and notwithstanding the assertion of further claims for compensation for damage due to delay, Buyer shall be obliged to pay interest in the amount of 8 percentage points above the base rate of the European Central Bank (ECB) according to Article 247 of German Civil Code (BGB) against the outstanding amount.

(3) Payment by bill of exchange and checks

Bills of exchange will be accepted only against an express agreement and – just like checks – only as payment and only subject to acceptance on a case-by-case basis. Discount charges and other fees shall be borne by the Buyer.

(4) Other consideration defaults

Performance of the contractually agreed services will be subject to the Buyer’s credit rating and financial solvency. In the event of default of payment, non-cashing of checks or bills of exchange, in case of cessation of payment, in case of the initiation of proceedings serving the settlement of debts, in the event of non-compliance with the terms of payment, in case of a poorer credit rating by a credit agency and in the presence of circumstances likely to reduce the Buyer’s credit rating we reserve the right to make reasonable alterations to the terms of the contract and, after ongoing non-compliance with the terms of payment, to withdraw from the contract.

(5) Right of offset or retention

Any offset or retention of Buyer’s counterclaims against our claims due for payment shall be admissible only inasmuch as Buyer’s claims have been ascertained as non-appealable or have been explicitly accepted by us in writing.
VIII. Retention of title and contractor's lien

(1) Agreement of basic and extended retention of title

We reserve the title to all goods supplied by us (goods subject to retention of title) until full settlement of all claims against Buyer arising from our business relationship. Buyer's partial payments shall not constitute any rights of co-ownership in the object of the contract but shall only provide Buyer with the corresponding expectancy rights. Bills of exchange and checks will only be considered as payment after having been cashed.

(2) Extended retention of title

In the case of processing or combination/incorporation of the goods subject to retention of title with other objects not belonging to us either by us or by the Buyer to produce a new uniform object, we shall be entitled to co-ownership of the newly created object in proportion to the value of the goods subject to retention of title compared to the value of the processed and/or incorporated items at the time of processing and/or combination/incorporation. The co-ownership interest in the newly created object thus arising for us shall be considered as goods subject to retention of title under the provisions set forth herein.

(3) Extended retention of title/sale und assignment in advance

Buyer may not sell the goods subject to our retention of title except in the ordinary course of business and only as long as Buyer is not in default of settlement of all our accounts receivable. Buyer hereby assigns to us in advance any of its claims receivable which may arise from the resale of the goods subject to retention of title as security for all of our claims arising from this business relationship. We hereby accept this assignment. In the event of Buyer's resale of the goods subject to retention of title along with other goods or co-ownership rights which are not our property, any claims from such resale shall be assigned to us only in the amount of the value of our goods subject to retention of title. The value of the goods subject to retention of title shall in each case be commensurate with our invoice value. Buyer shall be entitled to collect the demands assigned to us from the resale until such time as this entitlement is revoked by us.

(4) Threat to the right of ownership

For the duration of the retention of title, Buyer shall be prohibited from pledging the goods subject to retention of title or transferring them by way of security. In the event of seizures, confiscations or other dispositions or interventions made by third parties, especially by way of execution, Buyer has the duty to immediately notify us in writing.

(5) Obligation to surrender

If the Buyer is in total or partial default of settlement of our accounts receivable, we shall be entitled to demand return of the goods subject to retention of title at any time and to dispose of them at our own discretion, as well as to withhold any outstanding deliveries even if we have not cancelled the purchase.

(6) Release of security

If the value of the securities to which we are entitled under the foregoing provisions exceeds the value of our invoice claims by more than 20%, we undertake to release, at the Buyer's demand, excess securities of our choice, subject to the provision, however, that with the exception of deliveries in the genuine current account, such release shall only be effected for those deliveries or substitute values which have themselves been paid for in full.

(7) Contractor's lien

We shall be entitled to a lien on the Buyer’s movable objects having come into our possession for the performance of the contractual obligations for any of our accounts receivable under the contract according to Article 647 of the German Civil Code (BGB).
IX. Defects as to quality (material defects)

(1) Quality specification
The quality of the services to be rendered by us or the objects of the contract to be supplied by us is comprehensively and conclusively specified by the content of our written or electronic quotation documents. Unless otherwise agreed in writing, the use ensuing from our quotation shall constitute the sole content of the contract.

(2) Buyer’s duty to inspect and to notify defects
The Buyer shall be obliged to inspect our supplies and services immediately upon receipt and to give us written notice of any apparent defects within a period of two (2) weeks following delivery. Defects which remained undetected by the Buyer within said period in spite of careful examination shall be notified promptly in writing, but in any case not later than two (2) weeks following their detection. In case of Buyer’s failure to notify defects in good time, our delivery shall be deemed rendered as contractually agreed and free from defects. Article 377 of the German Commercial Code (HGB) shall apply.

(3) Insignificant defects, third-party fault
There will be no claims for defects in the case of only slight variation from the agreed quality, in the case of only slight impairment of serviceability, in the case of natural wear and tear or in the case of damage which occurs after the transfer of risk as a result of improper or negligent use, excessive stress, unsuitable operating equipment or poor construction work, unsuitable building ground, chemical, electro-chemical, electronic or electrical influences or other particular external influences which are not presupposed by the contract as well as in case of non-reproducible software faults. Nor will there be any claims for defects resulting from inappropriate modifications or repair work carried out by the Buyer or a third party and any consequences arising as a result thereof. Buyer may not refuse acceptance of deliveries due to insignificant defects.

Nor will there be any claims for defects in cases where the Buyer failed to correctly or adequately comply with its duties to cooperate as set forth under Section IV, Sub-Para. 3 of the present Terms & Conditions and thus caused or at least contributed to a defect.

(4) Liability for defects
Our supplies or services will, at our discretion, be either rectified or replaced free of charge in cases where a defect as to quality (material defect) occurs within the period of limitation, provided the reason for the defect had already existed at the time of passing of the risk, in which case the burden of explanation and proof lies with the Buyer. Buyer shall initially grant us an appropriate period of grace for this supplementary performance before being entitled to claim other warranty rights. In case our attempts at supplementary performance fail, Buyer may either withdraw from the contract or reduce the remuneration. Any additional compensation claims remain unaffected hereby. Insofar as used goods are sold, there will be no warranty for defects as these goods are sold to the exclusion of any warranty.

(5) Warranty period
Unless agreed otherwise, claims for defects as to quality (claims for material defects) shall become statute-barred after a period of twelve (12) months. This shall not apply in cases where the law prescribes longer periods as per Article 438 Sub-Para. 1 Nr. 2 (buildings and objects that have been used for buildings), Article 479 Sub-Para. 1 (recourse claims) and Article 634a Sub-Para.1 Nr. 2 (building defects) of the German Civil Code (BGB), as well as in cases of damage to life and limb, in cases of infringement of our obligations either intentionally or by gross negligence, and in cases of fraudulent concealment of a defect. The legal provisions as to suspension of expiration, suspension and recommencement of limitation periods remain unaffected.

(6) Reimbursement of expenses
Buyer’s claims based on any expenses or expenditures necessary for the purpose of supplementary performance, in particular transportation, traveling, labor and material costs, shall be excluded insofar as the expenses increase because the item delivered was subsequently taken to a location other than the Buyer’s business establishment shall be excluded unless said relocation is in line with the delivered item’s intended use.
(7) **Exclusion of rights of recourse**

Buyer’s rights of recourse against us under Article 478 German Civil Code (BGB) (contractor’s recourse) shall be limited to cases where the Buyer has not concluded any agreements with its customer exceeding the scope of the statutory provisions governing claims based on defects and/or to cases where no equivalent compensation scheme as defined by Article 478 Sub-Para. 4 of the German Civil Code (BGB) was otherwise agreed between the Buyer and us.

(8) **Return of defective products**

Insofar as Buyer’s warranty claims against us are justified, Buyer shall be obliged to either send the defective products back to us carriage prepaid or to keep them at hand for inspection and defect investigation at the location of its place of business in accordance with our decision.

(9) **Other claims for damages**

Otherwise, Section XI (Other claims for damages) of these Terms & Conditions of Supply and Service shall apply to claims for damages. Any further claims of the Buyer against us and our vicarious agents on account of material defects or any other claims than those regulated in the present Article IX shall be excluded.

X. **Defects of title, industrial property rights, copyrights**

(1) **Foreign industrial property rights**

Unless otherwise agreed, our obligation to render supplies and services free from third-party industrial property rights and copyrights (hereinafter: the industrial property rights) shall be limited to the Federal Republic of Germany. Should a third party assert justified claims against the Buyer for an infringement of industrial property rights by supplies and services rendered by us and used as stipulated in the contract, we shall be liable to the Buyer within the period of time set out by Section IX No. 5 as follows:

a) We shall, at our choice and at our expense, either obtain a license for the use of the supplies and services in question, or modify these so that the property right is not infringed, or replace them. If these alternatives are not available to us at reasonable conditions, Buyer may take recourse to statutory rights of rescission or reduction.

b) Our liability to pay damages, if applicable, shall be governed by Section XI of the present Terms & Conditions.

c) Our above obligations shall apply only if the Buyer immediately notifies us of any such claims asserted by the third party in writing, does not concede the existence of an infringement, and leaves any protective measures and settlement negotiations to our discretion. If the Buyer discontinues the use of the delivery on the grounds of loss mitigation or for other good reason, he shall be obliged to notify the third party that the property right is not infringed.

(2) **Buyer’s responsibility**

Buyer’s claims shall be excluded insofar as the Buyer is responsible for the infringement of property rights.

(3) **Other reasons for exclusion**

Buyer’s claims shall also be excluded insofar as the infringement of an industrial property law is due to the Buyer’s particular specifications, due to an application not foreseeable by us or due to the client having autonomously altered the delivery item or having autonomously combined it with products not delivered by us, causing the infringement of rights.

(4) **Other defects of title**

In the presence of other defects of title provisions of Section IX shall apply mutatis mutandis.

(5) **Exclusion of further reaching claims**

Further reaching claims or any claims made by the Buyer against us and our vicarious agents other than those dealt with in the present Section X and in Section IX concerning defects in title shall be excluded.
XI. Other claims for damages

(1) Exclusion of liability
Buyer's claims for damages or for reimbursement of expenses, regardless of their legal basis, but especially on account of breach of obligations arising from the debt relationship or from impermissible acts, shall be excluded.

(2) Compulsory liability
This shall not apply in cases where liability is mandatory, e.g. under the Product Liability Act, in cases of willful misconduct or gross negligence, in cases of injury to life, limb or health, in cases of culpable breach of material contractual duties, or in cases where guarantees were given. The claim for damages and reimbursement of expenses for the breach of essential contractual duties shall, however, be limited to the typical contractual and foreseeable damages, provided that there was no malicious intent or gross negligence and that it does not involve injury to life, body or health.

The above provisions do not impose a shift in the burden of proof to the Buyer’s disadvantage.

(3) Statute of limitations
Insofar as the Buyer is entitled to claims for damages under the present Section XI, such claims will become statute-barred at the end of the expiry period valid for material defect claims according to Section IX No. 5. Claims for damages under the product liability shall be governed by the statutory limitation periods.

XII. Product details

(1) Description of services and products in printed matter and advertising
Unless explicitly identified as warranted quality, all contents contained in our quotation documents and other printed matter as well as on data carriers constitute merely a description of services and products and do not represent an offer for the conclusion of a warranty agreement. The same applies to the contents of our advertising.

XIII. Miscellaneous provisions

(1) Buyer’s withdrawal from the contract
Buyer's statutory right of rescission in the event of a delay in delivery or faulty delivery shall not presume any fault on our part. In all other cases the Buyer may withdraw from the contract only in case of a breach of duty on our part.

(2) Data protection
Our Buyers are advised that their personal data are processed and forwarded by us for business purposes with the aid of EDP in compliance with the provisions of the data privacy law.

XIV. Place of performance and place of venue / applicable law

(1) Place of performance
The place of performance for all mutually owed obligations under the contract shall be Amberg (Germany).

(2) Place of venue
Unless agreed otherwise, the sole place of venue for all disputes arising directly or indirectly from the contractual relationship shall be Amberg (Germany). However, we shall also have the right to take legal action at the Buyer's registered place of business.

(3) Applicable law