

Bomatec AG – General Terms and Conditions

1. Exclusive Applicability

The present General Terms and Conditions shall apply if their applicability has been stipulated by either the offer or the confirmation of the order. Terms and conditions of the Buyer shall apply only if and to the extent they have been expressly accepted by Bomatec AG in writing. A waiver of this requirement as to form must be expressed in writing.

2. Offers

Offers that do not stipulate an acceptance period shall not be binding.

3. Conclusion of a Contract

The contract of delivery is deemed to have been concluded once Bomatec AG, after having received an order, has confirmed the same in writing.

4. Extent of Delivery

For the extent and execution of a delivery the tenor of the confirmation of the order shall be decisive. Any performance that is not defined in the confirmation of the order shall be charged for separately. Deliveries shall be effected, CIF (Cost, Insurance and Freight), at the agreed port of destination. Unless otherwise provided for in writing, provisions of INCOTERMS 2010 shall apply.

5. Technical Documents

Save as provided otherwise, prospectuses and catalogues shall not be binding. Data contained in technical documents shall be binding on Bomatec AG only if expressly guaranteed.

6. Prices

Prices indicated are net prices, packing excluded, in such freely disposable currency as has been agreed on, without any deductions allowed. All expenses, such as costs incurred up to the moment the goods are handed over to the carrier, loading charges, freight charges and expenses relating to the discharging of goods at the point of destination - provided such costs are included in the freight charges or are put to the debit of Bomatec AG at the conclusion of the contract of carriage - minimum transport insurance, expenses relating to the completion of customs formalities in the event of goods being exported, as well as all customs duties, taxes and other fiscal charges relating to export, shall be assumed by Bomatec AG. Save as provided otherwise in writing, the Buyer shall assume any taxes, charges, duties, customs duties and any other fiscal charges levied in relation with the import of goods. Bomatec AG reserves the right to adjust its prices if, within the period of time from the moment the offer was made and the moment delivery is executed in compliance with the stipulated term, the cost of material or the exchange-ratio of currencies were to vary.

7. Terms of Payment

Payments shall be made in compliance with terms stated on the invoices. The dates of payment shall also be observed even if transport, delivery, installation, putting into operation, or acceptance of products supplied are delayed or prevented due to reasons beyond Bomatec's control. The Buyer shall not withhold - in full or in part - payment of an invoice on account of complaints, claims or counterclaims raised by the Buyer and not recognized by Bomatec AG. If the Buyer is in default with respect to the agreed terms of payment, he shall be liable, without reminder, to pay default interest, from the agreed date of maturity, at the rate prevailing at Buyers domicile, but not less than 6 % p.a. payment of default interest shall not, however, release the Buyer from his contractual obligations to pay. Save as provided otherwise in writing, moulds, designs and tools shall not be binding on Bomatec AG. Data contained in technical documents shall be binding on Bomatec AG only if expressly guaranteed. Costs relating to moulds, designs and tools shall be paid for when payment is made for the respective delivery.

8. Reservation of Title

Bomatec AG shall remain the owner of all products supplied until it has received full payment for the delivery concerned. The Buyer herewith authorizes Bomatec AG to have said reservation of title registered without his cooperation being required.

9. Delivery Period

The agreed delivery period shall start on conclusion of the contract, provided all administrative formalities, such as import and export permits and permits to transfer funds have been completed and payments and securities made available at the moment the order is placed (if an agreement to this effect had been concluded) and all essential points of a technical nature settled. The delivery period shall be deemed to have been observed if the goods to be delivered have been handed over to the carrier on the agreed delivery date, or before expiry of the stipulated delivery period, with a view to being transported by the latter to the point of destination.

The delivery period is reasonably extended in the event of circumstances amounting to force majeure, which Bomatec AG, in spite of using the required care, is unable to overcome, or if the Buyer is in delay of performance with respect to any of his contractual obligations, in particular if he fails to comply with terms of payment. A contractual penalty to be paid in the event of delayed delivery must be made the object of a separate agreement in writing. If a substitute delivery is made, the Buyer cannot claim payment of the contractual penalty.

The Buyer shall not be entitled to raise a claim for compensation of damages suffered, or terminate the Contract, on account of the delay in delivery.

10. Examination and Acceptance of Products Supplied

Insofar as this is customary and indispensable in view of the delivery according to contract of the products as per item 9 above, said products shall be examined by Bomatec AG itself, or by a vicarious agent employed by it, at the expense of Bomatec AG. If the Buyer requests additional examinations, or examinations to be conducted prior to the loading of the goods in the shipping port, a written agreement to this effect shall have to be concluded and costs relating to such examinations shall be at Buyer's expense.

The Buyer shall examine the products delivered within ten (10) days after having received them and notify Bomatec AG immediately and in writing in the event of defects, pointing out to it all relevant particulars. If the Buyer fails to so notify, or if he lets the period allowed for examination lapse unused, the products supplied are deemed to have been accepted.

If the Buyer wishes examinations preceding acceptance to be conducted at his works, such examinations shall be agreed on in writing. If examinations preceding acceptance cannot be conducted within the prescribed time on account of reasons Bomatec AG is not responsible for, the products to be supplied are deemed to have the characteristics whose existence the examination was to confirm.

The Buyer shall not be entitled to raise any further claims based on faulty delivery; he shall, in particular, have neither a claim for damages, nor have the right to terminate the contract.

11. Packing

Subject to a contrary agreement, expenses relating to packing shall be determined by Bomatec AG in each individual case and charged to the Buyer separately. With the exception of such packing material as is required for the transport of goods undertaken by Bomatec AG, packing material is not taken back by the latter. If, however, packing material has been marked as being the property of Bomatec AG, in particular if packing material may be reused, the Buyer shall have to return such packing material, at his own expense, postage/freight paid to the place of departure of the products supplied.

12. Passing of Benefit and Risk

Benefit and risk shall pass to the Buyer the moment the goods have been handed over to the carrier pursuant to item 9 above. From this moment, the Buyer assumes all risks of loss of or damage to the goods concerned. If delivery is delayed or rendered impossible in consequence of reasons Bomatec AG does not have to answer for, the products concerned shall be stored at Buyer's risk.

13. Transport and Insurance

Any special requests as to transport, delivery, or insurance must be made known to Bomatec AG by the Buyer in due course. Complaints relating to transport shall be notified by the Buyer to the last carrier immediately on receipt of the delivery or the respective transport documents.

14. Liability

Bomatec AG is liable to the Buyer for the quality of its products. Bomatec AG undertakes to either repair or replace as soon as possible - at its discretion - upon Buyer's written demand, all parts of which it can be demonstrated that they have become defective or unfit for use on account of faulty material or conception, or imperfection in the execution, Replaced parts shall become the property of Bomatec AG. The Buyer shall not be entitled to raise any further claims on account of insufficient performance, in particular claims for compensation of damage suffered. A rescission of the Contract and a reduction of the purchase price are likewise excluded. Bomatec AG only assumes such expenses as are incurred by it in relation with repairing or replacing defective parts in its workshops or in the workshops of its suppliers.

If any acts or omissions on the part of the Buyer or his auxiliary staff entail personal injury or damage to property belonging to third parties, and if Bomatec AG is held liable for such injury or damage caused, Bomatec AG shall be entitled to have recourse against the Buyer.

15. Venue and Applicable Law

Venue for both the Buyer and Bomatec AG shall be the place of Bomatec's registered office. Bomatec AG however shall be entitled to bring action against the Buyer also at the place of Buyer's registered office.

This contractual relationship is governed by Swiss substantive law. In particular the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall not apply.