

General Conditions for the Delivery of BIHLER CAD/CAM Products

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I. Scope of validity, deviating terms and conditions of the customer

1. The present **General Conditions for the Delivery of BIHLER CAD/CAM products** („Conditions of Delivery“) shall apply to all quotations and declarations of acceptance, to all deliveries and performances as well as to all contracts regarding BIHLER CAD/CAM products between OTTO BIHLER Maschinenfabrik GmbH & Co. KG („supplier“) and the customer.
2. The present Conditions of Delivery shall apply exclusively. Conflicting or deviating terms and conditions of the customer will not be recognized unless in an individual case the supplier has expressly agreed to them.
3. During current business relations, the present Conditions of Delivery shall also apply to all future contracts for delivery of CAD/CAM products to be concluded between supplier and customer even if in an individual case the present Conditions of Delivery have not been explicitly referred to.

II. Written / text form, quotation, purchase order, conclusion of the contract, documents, technical modifications/extensions

1. Quotations of the supplier are without engagement unless expressly stated or agreed upon to be binding in written form. The contract becomes effective only with the written confirmation of the order received by the supplier, however, at the latest upon acceptance of the delivery by the customer.
2. Any documents relating to the quotation such as drawings and similar information, product descriptions, documentations, estimates of costs, calculations („documents“) shall be approximate unless expressly stated to be binding, and particularly do not constitute any guarantee for the condition of the goods. The supplier reserves the right of ownership and the copyright to the documents – even in digital form. Documents handed over to the customer by the supplier shall not be duplicated or disclosed to any third party without express written consent of the supplier. The supplier is obligated not to disclose documents declared confidential by the customer to third parties without the consent of the customer.
3. Technical modifications or extensions to the subject matter after conclusion of the contract at the request of the customer which cause additional costs and/or extension of the delivery time, require a written supplementary order by the customer and the written confirmation of this supplementary order by the supplier. The supplier will submit an estimate of costs for the additional costs to the customer and, if necessary, inform the customer about the extension of the delivery time.
4. For the supply of software an additional **software license and service agreement** must be entered into, which shall stipulate complementary to the present **General Conditions for the Delivery of BIHLER CAD/CAM products** the agreed provision for duration, licensing, copies, protection and safeguarding of licensed software products, rights of use, termination, limitation of liability and assignment. The copyright to software supplied shall in any case remain unaffected by the said license agreement.

III. Prices, change in prices, payment, right of retention/right to set-off of the customer, due payment interest, default in payment, deterioration of customer's financial circumstances

1. Unless otherwise agreed, prices are ex works, including loading at works, but excluding packaging, unloading, installation and commissioning at the customer's plus the currently valid value added tax.
2. Unless otherwise agreed, the prices indicated in the order confirmation are deemed to be fixed prices until the confirmed date of delivery. If no fixed prices have been stipulated and the delivery takes place more than 4 months after the conclusion of the contract, the supplier shall be entitled – in case of change in costs – to adjust the prices according to the changes in wages, salaries, material and production costs meanwhile occurred.
3. Unless otherwise agreed, payments shall be made in cash without any deductions and free of all charges to the account of the supplier as follows:
 - a) for deliveries abroad
 - (i) 1/3 of the order value upon receipt of the order confirmation,
 - (ii) balance on delivery.
 - b) for domestic deliveries
 - (i) on delivery
 - c) for all other cases (services, maintenance etc.) after delivery.

4. As to delivery or performance of the supplier, the customer may assert a right of retention only if based on claims arising from the same contractual relationship and being uncontested, ready for decision or which has become res judicata. The customer may offset only against counterclaims which are uncontested, ready for decision or have become res judicata.
5. In the event of the customer's defaulting any payment due, the supplier shall be entitled to charge the customer default interest at a rate of 8 per cent above the base interest rate; we reserve the right to claim further damages.
6. In the event the supplier should recognize after conclusion of the contract that his right to consideration of the customer should be endangered, the supplier will be entitled to request the customer to provide security for this consideration. In the event that customer is in default of payment of purchase price and does not present the required security within the set period, the supplier shall be entitled to withdraw from the contract and invoice his expenditures.

IV. Delivery time, delivery dates/periods, acceptance, part deliveries/performances, force majeure, delay in delivery, default in acceptance, duties of the customer, assignment of rights

1. The delivery period shall commence with the conclusion of the contract according to paragraph II.1. however not before the submission of the documents, permits and release certificates to be provided by the customer as well as not before the receipt of an accorded down payment. Should a specific calendar date for delivery be stipulated in the order confirmation, such date shall be adjourned by such a period of time as shall have elapsed until the above mentioned conditions will have been met unless the supplier shall be held responsible for the delay.
2. The delivery period shall be deemed observed if, until expiry of the same, the delivery item has left the supplier's works or if the customer has been notified of readiness for dispatch by the supplier. If acceptance is required – the acceptance date, or alternatively notification of readiness for acceptance, shall be decisive for the observance of the delivery time – except in the event of justified acceptance rejection.
3. Part deliveries shall be permitted provided that they are reasonable for the customer.
4. In the event of force majeure or other unforeseen hindrances (e.g. operational disturbances, mobilization, war, riot, legitimate strike, legitimate lockout, import and export bans, governmental measures), which preclude - without actual or attributable fault - the supplier temporarily from delivering or accomplishing the goods within the delivery period, the delivery period shall be extended – even whilst the delay – for the duration of the defaults caused by force of these circumstances. This shall also apply if the said circumstances shall occur to sub-contracted suppliers or if not submitting in good time governmental or other approvals or documents of any third party required for the execution of the delivery to the supplier. The customer will be informed of such extensions of the delivery period by the supplier. In case the delivery should prove all or in part impossible or unacceptable as a result of the mentioned circumstances, the supplier shall insofar be released from his obligation to supply or entitled to rescission. Any legal rights to withdraw will remain unaffected hereof.
5. In case of delay in delivery the supplier shall be liable for intent and gross negligence without limitation. In case of slight negligence the liability of the supplier shall be restricted to damages foreseeable at the conclusion of the contract and typical for this type of contract; for each full week of such delay however in total only up to a maximum amount equaling to 0,5 % of the value of the net order value of the overdue delivery and in total up to a maximum amount equaling 5 % of the respective net order value of the overdue delivery.
6. In the event that completion or dispatch of the delivery item is delayed at the request of or through the default of acceptance of the customer, the supplier shall be entitled to charge the customer, beginning one month after notification of readiness for acceptance, the storage costs incurred for storage of the not accepted goods at the supplier or any third, if stored in the supplier's works for each month of the delay or default of acceptance at least, however, 0,5 % of the respective net order value of the not accepted goods. The supplier, however, shall be entitled to request the customer to accept the goods not accepted within a reasonable extension of time; having set an appropriate period and expiry of the same to no avail the supplier shall be entitled to dispose of the object for delivery in some other way. The enforcement of other claims shall remain unaffected.
7. Should installation and commissioning of the goods at the customer's be stipulated, the latter has to fulfill the following obligations to co-operate:
The customer shall bear the costs of and supply in time:
 - a) auxiliary personnel and technicians at the number deemed necessary by the supplier,
 - b) hardware and software requirements necessary for installation and commissioning
 - c) spatial requirements.
8. The acceptance of products which are installed at the customer's premises by the supplier shall be deemed to be the installation of said products and their subsequent functional testing. For products which are not to be installed in the customer's premises by the supplier, acceptance shall be deemed to have taken place if the customer has taken delivery of said products and he will not submit an express written objection to the acceptance with an exact description of the defect or defects detected during acceptance within 7 (seven) days of receipt of said products.
9. The customer shall be allowed to assign rights and obligations arising from the license agreement with the written consent of the supplier only.

V. Place of performance, transfer of risk, insurance, receipt

1. Unless otherwise agreed, the place of performance for deliveries, performances and payments shall be the supplier's site.
2. Unless otherwise agreed, the risk shall be transferred to the customer as soon as the goods are delivered to a forwarder, carrier or to another person responsible for dispatch by the supplier even if part deliveries shall be carried out or if the supplier shall have undertaken other services e.g. the shipping costs or supply and installation. In the event that the receipt of goods by the customer does not take place in time, even though a receipt had been proposed to the latter, the risk is transferred to the customer upon notification of readiness for dispatch.
3. At the request of the customer and at the latter's expense, the supplier will insure the consignment against theft, breakage, transportation, fire and water damage and other insurable risks.
4. Delivered items shall be accepted by the customer even if they have minor defects, however, notwithstanding the rights under paragraph VII. This shall also apply to part deliveries.

VI. Retention of title, reservation of the right of use, insurance

1. The supplier shall retain the property title and for software the transfer of the right of use to the delivery item until complete payment of all receivables resulting from the contractual relationship and any other claims which the supplier subsequently acquires against the customer in direct context with the delivered goods regardless of which legal basis.
2. Insofar as the validity of the present retention of title / reservation of the right of use is subject to special preconditions or formal requirements in the customer's country, the latter shall be responsible for their fulfillment at his expense.
3. The supplier shall be entitled to insure the delivery item at the expense of the customer for the period of retention of title / reservation of the right of use against fire, water and other damages as well as against theft, unless the customer can produce suitable evidence that he himself has taken out such insurance.
4. Whilst retention of title / reservation of the right of use is in effect, pledge, renting or other relinquishment or modification of the goods subject to retention of title compromising the security of the supplier require the prior written consent of the latter. In the event that third parties take hold of the goods subject to retention of title, e.g. foreclosure, customer shall notify such third party of the supplier being the owner thereof / of the supplier's right of use and notify the supplier in writing immediately.
5. In the event that the customer suspends his payments not only temporarily, applies for the opening of insolvency proceedings against his assets or if insolvency proceedings are initiated against the customer's assets, the latter shall at the request of the supplier be obligated to reconstitute the goods subject to retention of title still in the supplier's property. Moreover, the supplier shall be entitled, in case of the customer's behavior being contrary to contract, in particular in case of default of payment, to demand the return of the goods subject to retention of title from the customer.

VII. Liability for defects, supplementary performance, costs for supplementary performance, self-remedy

The liability for defects of the supplier complies with law, modified by the following provisions:

1. The customer shall immediately inspect the delivered goods. The supplier shall be notified without delay of discovered defects in writing. The customer may at the supplier's option demand the remedy of the defect free of charge („rectification“) or a replacement delivery free of charge (“supplementary performance“). Replaced parts become the property of the supplier. In case of a replacement delivery or re-production the customer shall at the supplier's demand return the goods originally delivered.
2. The right of the customer to claim damages for any defects expires within twelve months starting with the date of delivery or respectively for services starting with the date of acceptance.
3. The customer shall grant the supplier the required time and chance for supplementary performance. In case supplementary performance fails, the customer may demand reduction of payment.
4. The supplier shall not be held responsible for damages caused by inappropriate or incorrect utilization, incorrect start-up by the customer or a third party, natural wear and tear, incorrect or negligent handling, excessive strain, inappropriate operating means, utilization while non observing the supplier's operating instructions as well as inappropriate modifications or maintenance works carried out by the customer or a third party without the supplier's prior approval, unless the supplier is responsible for these damages.
5. Only in urgent cases in which the operating safety is endangered and for preventing disproportionately large damages, in these cases the supplier has to be notified immediately, or if the supplier is in delay with the rectification of a defect and a set appropriate respite has expired unsuccessfully, the customer has the right to rectify the damage on his own or have it rectified by a third party and to demand reimbursement of the costs incurred from the supplier.
6. Claims for damages or expenses due to defects shall be granted to the customer only as far as the supplier's liability is not excluded or limited in accordance with paragraph VIII. Further or other claims for damages of the customer as laid down in paragraph VII are excluded.

7. The supplier guarantees the software to be in conformity with the specification which he has compiled for the user documentation established by himself. Moreover the supplier guarantees that the software has been produced with due care and specialist skill. Any guarantee for its specific application by the licensee shall be excluded. According to the current state of technology any complete exclusion of faults in the software is not possible.
8. Software faults which will not merely slightly impair the designated use of the same, shall, by the supplier and on his own choice as a function of the significance of the relative fault, either be rectified by means of providing the customer with an improved software version or by means of instructions on how to remedy the fault or to by-pass its effects, but only then if
 - a) the fault will have been reported in writing
 - b) the fault will have been described precisely and in detail
 - c) the fault will be reproducible
 - d) the fault will be inherent in the software copy supplied by Bihler.

Should an analysis of the fault result in the finding that such fault shall have arisen in the data or by improper operation by the customer or a third party, or that there is in fact no fault at all, then the supplier shall be entitled to charge the customer for the time spent, calculated on a hourly basis at the supplier's currently valid hourly rate, for work resulting from the reporting of such fault by the customer.
9. Any defects found must be reported to the supplier immediately in writing and such report shall be accompanied by a detailed description of such fault.
10. If at a later date technical document or data will have been supplied to the customer, without there being or there having been existing an obligation under the contract to this effect, the customer shall take these over in such condition as those are. The customer is aware of the fact that these data in the circumstances may not have been further kept up to date and that therefore these might possibly be technically out of date already. The attention of the customer is expressly drawn to the fact that such documents and data are not always compatible for use on other systems. For this reason the supplier does not undertake to provide any warranty nor he assumes any liability.

VIII. Joint and several liability, limitation

1. The supplier shall be liable for intent and gross negligence without limitation.
2. In the event of a slightly negligent breach of a principal or ancillary obligation which jeopardizes the attainment of the purpose of the contract or whose fulfillment enables the correct accomplishment of the contract in the first place and on whose compliance the customer could confide in („essential ancillary obligation“), the liability of the supplier shall be restricted to damages foreseeable at the conclusion of the contract and typical for this type of contract. In the event of a slightly negligent breach of ancillary obligations which are no essential ancillary obligations, the supplier shall not be liable.
3. Liability in cases of fraudulent concealment of defects, assumption of a guarantee for the condition of the goods, for claims based on law on product liability as well as for damages due to injury to life, body or health shall remain unaffected by preceding paragraph VIII.2. An alteration of the onus of proof to the disadvantage of the customer shall hereby not be associated with.
4. With the exception of claims arising from illegitimate acts the right of the customer to enforce claims for damages whose liability is restricted according to the present paragraph VIII, will expire within one year beginning with the date of commencement of the legal limitation period.

IX. Industrial property rights / copyrights, know-how

1. Each contractual partner will immediately notify the other contractual partner in writing, in case claims are enforced against him due to infringement of such rights. The supplier will defend the customer against, exempt him and indemnify him from all legitimate claims from third parties provided that,
 - a) the customer notifies the supplier immediately in writing,
 - b) the supplier can assume the complete control of the defense of such a claim and all associated settlement negotiations and
 - c) the customer makes available the necessary information and authorizations and
 - d) the infringement of such industrial property rights shall not have been caused by the product supplied by the supplier either having been modified by the customer or third parties, having been made use of in a way which is not covered by the contract or having been used in conjunction with products not supplied by the supplier.
2. Should the delivery item infringe an industrial property right or copyright held by a third party, the supplier will modify or replace at his option and on his charge the delivery item in a for the customer reasonable way so that rights of third parties are not infringed any longer and the delivery item still complies with the functions provided in the contract or he shall provide the right of utilization to the customer by concluding a license contract. In case this should not be possible to economically reasonable conditions or within a reasonable period, the customer shall be entitled to withdraw from the contract or to reduce the purchase price reasonably. On the conditions of the preceding sentence 2 the supplier shall as well have the right to withdraw from the contract. Any claims for damages of the customer are subject to the limitations according to paragraph VIII. of the present Conditions of Delivery.

3. Whenever a third party claims injunctive reliefs to the supplier on account of industrial property rights, the supplier shall have the right to decline performance of the contract and this under the exclusion of any claims for damages by the customer. The exclusion of claims for damages shall be void if there is proven against the supplier that he has acted willfully or with gross negligence.
4. Know-how and industrial property rights of the supplier or the customer which existed before establishing the cooperation, shall remain the sole property of the supplier or customer.
5. Know-how developed during cooperation between supplier and customer shall remain joint property. Both parties can file an application for industrial property rights pertaining to this know-how. Manufacturing processes and other know-how developed solely by the supplier, shall remain the property of the supplier. The supplier is free to file an application for industrial property rights for these manufacturing processes and other know-how. The supplier is free to file an application for protective rights for these manufacturing processes and other know-how.

X. Non-disclosure

1. The supplier and the customer undertake to treat as confidential for an unlimited period of time, in particular also after termination of the cooperation, all knowledge of confidential information and trade secrets of the respective other party acquired under the respective contract and its performance, in particular to take all adequate precautions to preserve its confidentiality and not to disclose it to any third party. These include in particular technical information, layouts, data, ideas, software, trade secrets, documentation, source codes as well as other information indicated as being confidential or being recognizable as such.
2. The obligation of secrecy does not apply to confidential information,
 - a) which at the moment of disclosure was already evident or will become publicly known afterwards, without non-observance of the above mentioned provisions being concurrently causative for,
 - b) which is disclosed by a party expressly on a non-confidential basis,
 - c) which before the disclosure was already in legal possession of the other party, or
 - d) which is disclosed to the latter afterwards by a third party without breaching confidentiality. The burden of proof for the presence of one of the above mentioned exceptions is assumed by the party referring to it.

XI. Data protection, handling of contact details

1. All transferred personal data will be processed in accordance with applicable data protection laws by both parties
2. The contact details provided by the purchaser shall be utilized by the supplier beyond the contract term, until revocation by the purchaser, to provide information about related products and services of the supplier

XII. Place of jurisdiction, applicable law, partial invalidity

1. For all disputes arising from the contractual relationship the suit shall be filed at the court having jurisdiction for the registered office of the headquarters of the supplier. The supplier shall also be entitled to file a suit at the court having jurisdiction for the head office of the customer.
2. The law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
3. In the event of provisions of these Conditions of Delivery or parts of it be or become completely or partly ineffective, the validity of the present Conditions of Delivery remain unaffected by this. Should the ineffective provisions contain an effective and adequate part the latter shall persist. The parties will try to find a substitute provision which best compares to the economic result of the omitted provision.