

GENERAL TERMS AND CONDITIONS OF BUSINESS OF BADERTEC GMBH

Status: October 2015

1. Validity of Terms and Conditions

Badertec GmbH, hereinafter referred to as Badertec, will provide deliveries, services and offers exclusively on the basis of these General Terms of Business. Any acknowledgement from the side of the customer referring to his own business or purchase conditions will be hereby expressly rejected. Such purchase or business conditions of the customer shall not become part of the contract even upon acceptance of the order. Agreements that deviate from the delivery and payment terms and conditions require the express written consent of Badertec for each individual contract.

2. Offers and Conclusion of Contract

Our offers are subject to change until acceptance by the customer and can therefore be cancelled by Badertec at any time until receipt of a written acceptance or shipment of the delivery item. Badertec shall be bound to specially prepared offers for 30 calendar days starting from the date of the offer.

- a) All orders by customers shall only become legally binding upon explicit confirmation in writing by Badertec or with the delivery of the product by Badertec. The customer shall be bound to the order for a duration of 14 days. The deadline shall begin from receipt of the order by Badertec. During this 14-day period Badertec shall be entitled to refuse the conclusion of a contract. In the event that this is not declined by Badertec or the goods are delivered by Badertec during this period, the contract becomes binding without a written order confirmation as an exception.
- b) The details of weight, size, volumetric capacity, price, performance etc. contained in catalogues, brochures, circulars, advertisements, illustrations and price lists shall be non-binding, unless they become explicitly declared part of the contract. Badertec shall only be obliged to maintain exact adherence to DIN norms, diagrams, weight and size details and plans if these are explicitly agreed to in writing. Otherwise the contracted characteristics of the products by Badertec shall solely comply with the product description provided by Badertec. One-sided expressed notions from the customer shall remain out of consideration as well as advertising messages and other public statements of Badertec or of one of their suppliers.
- c) Any information included in offers and/or order confirmations provided by Badertec, which is based on an obvious error, i.e. a spelling or calculation error, shall not be binding on Badertec. Instead, the obviously intended information shall apply.
- d) Offer documents, drawings, descriptions, samples and cost estimates provided by Badertec may not be disclosed, published, copied or otherwise made available to third parties without the approval by Badertec. Upon request the documents must be returned without any copies being withheld.

2. Scope of Deliveries

- a) The information specified in the written order confirmation, or without order confirmation the information in the offer by Badertec, shall apply for the scope of the deliveries. The customer shall assume full responsibility for the documents to be supplied by them, such as drawings, models, templates, samples and such. All agreements regarding dimensions, measurements and other details shall explicitly require written confirmation.
- b) Samples shall optionally be delivered for information upon request.

- c) The customer shall be liable for damages caused to objects provided by Badertec and therefore shall have to pay the respective purchase price of the component.
- d) Badertec reserves the right to make changes based on technological developments.

3. Prices, Changes in Prices

- a) The prices shall apply ex works plus the respective value added tax valid in the Federal Republic of Germany.
- b) Prices shall be understood being excluding packaging, transport, customs, postal charges and insurance. This shall also apply for agreed partial deliveries and express deliveries. Any insurance of the goods against transport damage, transport loss or breakage shall be taken out exclusively at the express request of the customer and to his /her account.
- c) Should six months lapse between the conclusion of the contract and the agreed and/or actual date of delivery, Badertec's prices valid at the time of delivery or provision of goods shall be applicable. In the event of price escalations of Badertec's preferred suppliers, the escalation of salaries and transport costs, or any other unexpected cost escalations Badertec is entitled to negotiate a new fixed price.

5. Time of Delivery

- a) Delivery time shall be the date specified by Badertec in writing in the order confirmation. Compliance with time of delivery by Badertec shall be dependent on prior clarification of all commercial and technical questions between the contracting parties and the customer fulfilling all obligations accruing to him, such as the provision of a down payment or the submission of documents. The time of delivery shall be delayed by the duration of such an interference. Badertec shall inform the customer as soon as possible of any potential delays which become apparent.
- b) The time of delivery shall be met if the delivery item has left Badertec's factory before expiration of delivery time or Badertec has provided the delivery item and informed the customer of readiness for dispatch.
- c) If Badertec falls into arrears, an appropriate period of grace shall be defined. Upon the expiry of this time limit, the customer may rescind the contract. The customer shall only be entitled to claims for damages and expenses to the extent covered by section 6 of these terms and conditions.
- d) If delivery or service is delayed due to circumstances for which Badertec, its legal representative or performing agent is responsible, liability shall be carried out in accordance with the law. In case of slight negligence, liability shall be limited to the typical and reasonably foreseeable damage.
- e) This principle will be applicable, in particular, in cases of force, strike, lockout, official ordinances etc., also if such hindrances take place at supplier locations of Badertec or their sub-suppliers.
- f) The duration of a period of grace to be granted by the customer according to the statutory provisions in case of delay of delivery shall amount to two weeks which shall start upon receipt of the final deadline by Badertec.

6. Shipping and Transfer of Risks

- a) If the ordered item is sent to the customer at the latter's request, the risk of a chance loss or a chance deterioration of the item for delivery shall pass over to the customer upon the transfer of the delivery item to the transport carrier or shipping agent. This also applies if it is not dispatched from the place of fulfilment and/or if Badertec bears the freight costs.

- b) If the goods are prepared for dispatch and the dispatch is delayed on grounds for which the customer is responsible, the transfer of risks to the customer shall take place at the point in time at which the dispatch readiness is communicated to the customer.
- c) This shall also apply if partial deliveries take place or if the supplier has agreed to other services, e.g. the dispatch costs or delivery or installation. Partial deliveries shall be permissible as far as these can be reasonably expected of the customer. If a formal acceptance is required, it shall be decisive for the transfer of risk. The customer shall not refuse acceptance in the event of a minor defect.
- d) Upon request of the customer, shipments shall be insured in his/her name and on his/her invoice against the usual transport risks.

7. Payment

- a) If nothing to the contrary has been agreed, invoices of Badertec are payable immediately upon receipt without deduction. Badertec shall supply products with a total value under € 500.- cash on delivery plus postage, freight and packaging. Any terms of payment which deviate from these terms of payment shall be subject to written agreement.
- b) All receivables shall become immediately due and payable if the customer is in delay of payment, and if circumstances are disclosed which in the opinion of Badertec are capable of impairing the customer's creditworthiness. In such cases, Badertec shall be entitled to only execute any outstanding deliveries against advance payment. The customer shall only be entitled to a right to withhold payments, or offset them against counter-claims, insofar as his/her counter-claims are undisputed or have been determined by final judicial decision.
- c) Badertec explicitly reserves the right to refuse cheques or bills of exchange. Bills of exchange or cheques are accepted only on account of payment. Discounting and bill charges shall be borne by the customer and are payable immediately.
- d) If Badertec becomes aware of circumstances which put the credit worthiness of the customer in question, especially when a cheque is not honoured or payments are stopped, Badertec shall be entitled to declare that the whole of the outstanding debt is immediately payable even if Badertec has previously accepted cheques. Moreover, Badertec shall be entitled, in this case, to demand advance payments or securities.
- e) If the customer suspends his payments finally and/or if an application is made to open insolvency proceedings with regard to his/her assets, Badertec shall be entitled to withdraw from the part of the delivery contract not yet performed.
- f) In spite of contradictory provisions of the customer, Badertec shall be entitled to initially offset payments against the previous dues. Badertec shall inform the customer of the assignment of the payment. If costs and interest have already occurred, Badertec shall be entitled to assign the payment first of all to the expenses, then to the interests and at last to the primary debt.
- g) If the customer falls into arrears with payments, Badertec shall be entitled to charge respective interest on arrears as required by law. Badertec reserves the right to assert more extensive damage caused by default. For the cases mentioned above the customer's right to prove lesser damage (which would then be decisive) will remain unaffected.
- h) Offsetting by the customer is excluded, provided that no finally legally established counter-claims by Badertec are concerned.

8. Claims for defects

- a) Badertec shall guarantee that the delivered item will be free of material defects and defects in title.
- b) If Badertec is entrusted with solving design tasks, a material default in quality shall only exist if the customer demonstrates that the item does not comply with the general state of the art.
- c) If the service rendered by Badertec or the delivered item is deficient, Badertec shall be entitled to either provide an item that is free from defects (substitute delivery) or remove the defect (rectification). Multiple

rectifications - in general two - shall be permitted within an appropriate period of time.

- d) The customer's right to assert his/her claims on grounds of default shall be at all times subject to the statute of limitations of 12 months from the day of transfer of risks, provided that statutory provisions do not imperatively stipulate a longer warranty period. If the customer is a contractor in the sense of section 14 of the German Civil Code (BGB), clauses 8e) and 8f) shall apply accordingly.
- e) Claims for obvious defects can no longer be asserted after acceptance. Otherwise, for the purpose of compliance with the warranty claims, the customer must notify Badertec immediately, but not later than two weeks after delivery, in writing of such defects. The written notification must precisely describe the nature and extent of the defects. The defective goods must be kept in the condition in which they were at the time when the defect was established, ready for Badertec to inspect.
- f) Insignificant, reasonable deviations in the dimensions and designs - in particular in the event of repeat orders - shall not be deemed cause for complaint, unless absolute compliance was expressly stipulated. Technical improvements and necessary technical modifications shall also be regarded as in accordance with the contract, provided these represent no deterioration of performance capability.
- g) If Badertec's operating or maintenance instructions are not followed, if modifications are made to the parts, or parts are changed or interchanged, or if consumable materials are used that do not correspond with the original specifications, this shall be considered improper transport, storage and handling by the customer or third parties, therefore any warranty shall become null and void. No claims for defects by the customer shall be accepted if the customer or a third party has made changes or rework to the delivered goods without seeking prior consent from Badertec.
- h) Normal wear and tear shall be excluded from the liability.
- i) In the event that supplementary performance fails within an appropriate period of time, the customer shall, at his/her choice, demand a reduction in price or rescind the contract.
- j) The above provisions in this paragraph shall not be applicable to the sale of items which have already been used. For consumers, the period for asserting claims for defects of one year shall apply to these. Used objects shall be supplied to businesses without any warranty.
- k) If Badertec is at the customer's disposal providing information on the application of its goods beyond its statutory or contractual obligations, according to section 9 of these general terms and conditions, Badertec shall be liable only in the event that a separate payment has been agreed for this service.

9. Limitation of Liability

No claims may be asserted for damage reimbursements for material defects that were not apparent to Badertec exercising the usual care and workmanlike effort. For any other damage not affecting the delivery item, Badertec and its subcontractors or vicarious agents shall only be liable for intent or gross negligence or for a culpable breach of major contractual obligations. In case of slightly negligent breaches, the liability of Badertec shall be limited to foreseeable damage typical of the contract concerned. The liability for damage claims under the German Product Liability Act (PrdHG) shall remain unaffected, as shall liability for injury caused to life, body and health. All further claims for damages shall be herewith excluded.

10. Reservation of Title

- a) Until all payment claims to which Badertec is entitled from the customer for any legal reason now or in the future have been met, Badertec hereby reserves its right to ownership of all of the delivery items supplied (reserved objects).
- b) The customer shall be obliged to notify Badertec in writing without delay of any attachments of the reserved objects and inform the

respective pledgees of the reservation of title. Except in the cases specified in the following items, the customer shall not be entitled to sell, give away, pledge or assign by way of security the objects supplied to him subject to the reservation of title.

c) If items have been delivered for a business maintained by the customer, the items may be resold as part of the regular operation of the business. In this case, the claims of the customer against his own customer from such a sale shall already have been transferred to Badertec. If the items are resold on credit, the customer shall be required to retain ownership of the goods sold to his customer. The customer shall transfer all rights and claims from this reservation of title to Badertec.

d) Any finishing or processing of the reserved goods by the customer shall be performed on behalf of Badertec free of charge. In the case of processing, connecting, mixing or amalgamating reserved goods with other goods that are not from Badertec, Badertec shall be entitled to the co-ownership share of the new item in the proportion of the gross value of the reserved goods to that of the other processed items at the time of processing, connecting, mixing or amalgamating. If the customer acquires sole ownership of the new item, the parties to the contract are in agreement that the customer shall grant Badertec co-ownership of the newly created item in proportion of the gross value of the processed and/or connected, commingled or mixed reserved goods and shall store these for Badertec without charge. If the reserved goods are resold together with other goods - no matter whether without or after processing, connecting, mixing or amalgamating - the anticipatory assignment agreed in Item 3 above shall only be applicable to the amount of the gross value of the reserved goods which have been resold together with the other goods.

e) If the reserved objects are installed as fixtures of a piece of real property belonging to the customer, the customer shall assign the claims arising from the commercial sale of the real property or from real property rights to the value of the reserved-title including all ancillary rights, to Badertec.

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g) If the value of the securities existing for Badertec according to the above provisions exceeds - not only temporarily - the value of Badertec's claims by more than 20% in total, Badertec shall be obliged, at the customer's request, to correspondingly release securities of its choice.

h) Any lack of conformity with the contract on parts of the customer, in particular in case of being in delay with his /her payments, Badertec shall be entitled to take back the goods after reminding the customer of his arrears and giving notice of withdrawal, and the customer is obliged to hand them over. If the customer has fulfilled the contract, Badertec shall return all such items.

11. Infringement of Copyrights and/or Industrial Property Rights

It shall be the obligation of the customer to check that the documentation he/she provides does not infringe any rights of third parties, in particular any copyrights, industrial property rights (registered designs, patents, utility models, trademarks). In case of claims made against Badertec by third parties due to the infringement of copyrights and/or industrial property rights or due to infringement of the law against unfair competition relating to the utilisation, use or reproduction of the documentation provided by the customer, the customer shall support Badertec in defending itself against these infringements.

12. Documents and Confidentiality

Badertec shall retain title to and any intellectual property rights of all samples, drawings and other documents and similar information of physical and non-physical type, which were made available to the customer in connection with contractual negotiations and contract

performance. The customer shall treat them confidentially and may not disclose them to third parties. The customer shall not use the provided documents and information for any other but the contractual purpose. Upon termination of the contractual relationship the customer shall return all documents received upon request of Badertec.

13. Applicable Law, Venue, Written Form and Partial Invalidity

a) These terms of business and the entire legal relationship between the Badertec and the customer shall be governed solely by the Law of the Federal Republic of Germany.

b) If the customer is a merchant within the meaning of the German Commercial Code (HGB), legal entity of public law or of special fund under public law, sole court of jurisdiction for all direct and indirect disputes arising from this contract shall be Badertec's registered place of business.

c) Collateral agreements, amendments, supplements and any other deviations from these terms and conditions shall be valid only with a written consent from Badertec.

d) If one or more provisions of these terms and conditions of business should be or become invalid, this shall not affect the validity of all other provisions or agreement between Badertec and the customer.