

# Bosch Building Automation GmbH

## General Terms and Conditions of Delivery for Export Business

For use in legal transactions of the Bosch Building Automation GmbH (Bosch) with entrepreneurs, public law legal entities and public law special funds (customer).

### 1. General Provisions

- 1.1 Only the following Terms and Conditions shall govern Bosch's deliveries. Terms and conditions opposing or deviating from Bosch's Terms and Conditions shall not apply unless Bosch has expressly approved the application thereof. The following conditions shall also apply if, notwithstanding Bosch's knowledge of terms and conditions of the customer opposing or deviating from Bosch's Terms and Conditions, Bosch unconditionally performs delivery to the customer.
- 1.2 Oral agreements before or at the time when the contract was concluded shall require written confirmation by Bosch to be effective.
- 1.3 If the customer fails to accept Bosch's quotation within two weeks of receipt thereof, Bosch shall be entitled to cancel.
- 1.4 Cost estimates are not binding and subject to charge except as otherwise expressly agreed.
- 1.5 These Terms and Conditions shall also govern all future deliveries to the customer pending the entry into effect of Bosch's new terms and conditions of delivery.

### 2. Prices

- 2.1 Invoices shall be calculated on the basis of the list prices in effect on the date of delivery plus value-added tax. Value added tax will not be charged in those cases where the conditions have been met for export shipments to be exempted from such tax.
- 2.2 In the absence of any special agreement, prices shall be deemed to be FCA (Incoterms 2010) excluding packaging.
- 2.3 Bosch reserves the right to adjust Bosch's prices appropriately in the event of cost reductions or increases incurred after the contract has been entered into, in particular in case of wage cost changes, for instance due to collective bargaining agreements, or changes in the price of materials.

### 3. Delivery, Delivery Dates, Default

- 3.1 The precondition for the commencement of and compliance with delivery dates agreed upon is that the collaboration duties shall have been performed by the customer, in particular the timely delivery of the entire materials, documentation, approvals, examinations and clearances to be provided by the customer and the compliance with payment terms agreed upon. If these preconditions are not duly met in good time, the delivery dates shall be reasonably extended; this shall not apply if the supplier is solely responsible for the delay.
- 3.2 If non-compliance with the delivery date is due to force majeure or to other disturbances beyond Bosch's control e.g. war, terrorist attacks, import or export restrictions, labor disputes (e.g. strikes and lockouts), including such disturbances affecting subcontractors,

the delivery dates agreed upon shall be extended appropriately.

- 3.3 If Bosch is in default with Bosch's delivery, the customer shall declare upon Bosch's request and within a reasonable period of time whether it insists upon performance of delivery or asserts its other statutory rights.
- 3.4 In case of delayed delivery, the customer may rescind the contract within the framework of statutory provisions only insofar as Bosch is responsible for the delay.
- 3.5 Clause 9 applies to claims to damages by the customer on account of delayed delivery.
- 3.6 If a customer is in default of acceptance or if a customer culpably violates its collaboration duties or if at the customer's request, shipment or delivery of the goods is delayed for longer than one month after notification that the goods are ready for shipment, the customer can be charged for storage an amount of 0.5 % of the price of the products for delivery for each calendar month of storage commenced, but not exceeding an aggregate amount of 5 % of the price of the products for delivery. The contracting parties reserve the right to prove higher or lower storage costs. The right to raise further claims on account of a delayed acceptance shall remain unaffected hereby.
- 3.7 Part shipments and corresponding invoices are admissible unless this is an unreasonable hardship for the customer.

### 4. Transfer of Risk

- 4.1 Delivery is effected FCA (Incoterms 2010) except as expressly otherwise agreed.
- 4.2 At the customer's request and cost Bosch shall insure shipments against customary transport risks.

### 5. Complaints and Notification of Defects

- 5.1 The customer must notify Bosch in writing immediately, no later than 15 days after receipt of the goods, of any recognizable defects. Adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment shall be submitted to Bosch together with the notification of the defect. Any other defects must be notified by the customer in writing immediately after discovery thereof. The date of receipt by Bosch of notification of a defect shall determine whether or not notification is in good time.
- 5.2 If the notification of a defect is unjustified Bosch shall be entitled to demand compensation from the customer for any expenses Bosch has incurred unless the customer can prove that it is not at fault regarding the unjustified notification of a defect.
- 5.3 Claims on account of defects shall be excluded if the notification of the defect is not received in good time.

## 6. Taking Delivery

The customer may not refuse to take delivery on account of minor defects.

## 7. Defects/Defects of Title

7.1 Claims on account of defects shall become time-barred after a period of 12 months. The foregoing provision shall not apply insofar as longer time bar periods are prescribed by statute pursuant to Section 438 para 1 (2) (building constructions and goods for building constructions), Section 479 para 1 (claim to recourse) and Section 634a (construction defects) German Civil Code [BGB].

7.2 The time bar period for defects commences as follows:

- a) in case of products for vehicle and engine equipment on the date on which the product is put into use, i.e. in case of original equipment on the date of first registration of the vehicle and in other cases upon installation, but no later than 6 months after delivery of the product (date of transfer of risk);
- b) in all other cases upon delivery of the product (date of transfer of risk).

7.3 If a defect arises during the time bar period the cause of which already existed on the date of transfer of risk, Bosch may affect subsequent performance at Bosch's discretion either by remedying the defect or delivering a defect-free product.

7.4 The time bar does not start to run again as a result of the subsequent performance.

7.5 If subsequent performance should be abortive, the customer may, without prejudice to any claims to damages, rescind the contract or reduce the amount of payment in accordance with statutory provisions.

7.6 Claims by the customer on account of expenditure required for the purpose of subsequent performance, in particular costs of transport, transportation, labor and materials, shall be governed by statutory provisions. They shall, however, be excluded insofar as such expenditure is increased due to the fact that the product delivered was subsequently taken to a place other than the branch operation of the customer unless such removal is in accordance with the designated use of the product.

7.7 Claims on account of defects do not exist in case of merely inconsiderable deviation from the quality agreed upon or in case of only minor impairment to the use of the product.

7.8 The following are not deemed to be defects:

- ordinary wear and tear;
- characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, non-compliance with installation or handling regulations or to excessive strain or use;
- characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract;
- non-reproducible software errors.

Claims on account of defects do not exist if the product is modified by third parties or due to the installation of parts manufactured by third parties unless the defect has no causal connection with the modification.

Bosch assumes no liability for the quality of the product based on the design or choice of material insofar as the customer stipulated the design or material.

7.9 Claims to recourse against Bosch by the customer shall only exist insofar as the customer has not reached any agreements with its customer which are more far-reaching than statutory claims on account of defects, for instance accommodation agreements.

7.10 Claims on account of defects including claims to recourse by the customer shall be excluded insofar as the customer has had the defect remedied by a specialized workshop/service station not authorized by Bosch.

7.11 Clauses 7.3, 7.6, 7.7 shall not apply insofar as Bosch's product was proved to be sold by the customer or customer of the customer to a consumer without being processed or installed into another product.

7.12 Bosch's obligation to pay damages and to compensate for abortive expenditure within the meaning of Section 284 BGB on account of defects shall be governed by clause 9 in all other respects. Any further-reaching claims or claims by the customer on account of defects other than those covered by this clause 7 are excluded.

7.13 The provisions of this clause 7 shall apply mutatis mutandis to defects of title which are not constituted by the infringement of third party industrial property rights.

## 8. Industrial Property Rights and Copyright

8.1 Bosch shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.

8.2 Bosch shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.

8.3 The customer must notify Bosch immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at Bosch's request, insofar as possible, allow Bosch to conduct the litigation (including non-judicial proceedings).

8.4 Bosch are entitled, at Bosch's discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to replace it by an equivalent substitute product which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall, insofar as the customer allowed Bosch to carry out a modification, be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions Bosch too shall have a right of rescission. The ruling set forth in clause 7.9 shall apply accordingly. Bosch reserves the right to carry out the action at Bosch's disposal under the terms of sentence one of this clause 8.4 even if the infringement of the industrial property right has not been ruled on by a court of law with res judicata effect or recognized by Bosch.

8.5 Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported Bosch to a reasonable extent in the defense against claims by third parties.

8.6 Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from Bosch or if the products are used in a manner which Bosch was unable to foresee.

8.7 Bosch's obligation to pay damages in case of infringements of industrial property rights is governed by clause 9 in all other respects.

8.8 Clauses 7.1 and 7.2 apply mutatis mutandis to the time bar for claims based on infringements of industrial property rights.

8.9 Further-reaching claims or claims other than those claims of the customer governed by this clause 8 on account of an infringement of third party industrial property rights are excluded.

#### **9. Claims to Damages**

9.1 Bosch is liable to pay damages and compensation of abortive expenditure within the meaning of Section 284 BGB (hereinafter referred to as damages) on account of a violation of contractual and non-contractual obligations only in case of

- (i) intent or gross negligence,
- (ii) in case of negligent or deliberate fatal injury, physical injury or injury to health,
- (iii) on account of assuming a quality guarantee,
- (iv) in case of a negligent or deliberate breach of material contractual duties,
- (v) on account of compulsory statutory liability pursuant to the German Product Liability Act or
- (vi) on account of any other compulsory liability.

9.2 The damages for a breach of material contractual duties are, however, limited to foreseeable damage, typical for the type of contract, except in the event of intent or gross negligence or on account of fatal injury, physical injury or injury to health or on account of assuming a quality guarantee.

9.3 Liability for damages exceeding that provided for in clause 9 is excluded irrespective of the legal nature of the claim raised. This applies in particular to claims for damages arising from *culpa in contrahendo* (fault arising in conclusion of a contract), on account of other breaches of duty and to tort claims for compensation of property damage pursuant to Sec 823 BGB.

9.4 Insofar as liability for damages is excluded with respect to us, this also applies to the personal liability for damages of Bosch employees, representatives and persons engaged by Bosch in performance of Bosch obligations.

#### **10. Retention of Title**

10.1 Bosch retains title to the products delivered pending full performance of all claims to which Bosch is entitled on the basis of the business relationship now and in future.

10.2 The customer is entitled to process Bosch's products or connect them with other products within the due course of the customer's business. By way of security for Bosch's claims set forth in clause 10.1 above Bosch shall acquire joint ownership in the products created as

a result of such processing or connection. The customer hereby transfers such joint ownership to Bosch now already. As an ancillary contractual obligation the customer shall store free of charge the goods to which Bosch has retained title. The amount of Bosch's joint ownership share shall be determined by the ratio between the value of Bosch's product (calculated in accordance with the final invoice amount including VAT) and the value of the product created by processing or connection at the time of such processing or connection.

10.3 The customer shall be entitled to sell the products in the normal course of business against cash payment or subject to retention of title. The customer assigns to Bosch now already all claims in full together with all ancillary rights to which the customer is entitled from the further sale of Bosch's product, irrespective of whether Bosch's product has been further processed or not. The assigned claims act as security for Bosch's claims set forth in clause 10.1 above. The customer is entitled to collect the claims assigned. Bosch may revoke the rights of the customer as set forth in this clause 10.3 if the customer fails to duly comply with its contractual duties with respect to Bosch, is in default of payment, suspends its payments or if the customer files for insolvency proceedings or similar proceedings to be instituted with respect to its assets for debt settlement. Bosch may also revoke the rights of the customer pursuant to this clause 10.3 if the customer's asset position should deteriorate materially or threaten to deteriorate or if the customer is insolvent or over indebted.

10.4 At Bosch's request the customer shall advise Bosch immediately in writing of the parties to whom the products to which Bosch has retained title or joint title have been sold and of the claims to which the customer is entitled on the basis of such sale and shall issue to Bosch deeds officially authenticated at the customer's expense relating to the assignment of the claims.

10.5 The customer is not entitled to effect any other disposals of the products to which Bosch has retained title or joint title or of the claims assigned to Bosch. The customer must notify Bosch immediately of any attachments of or other impairments to the rights of products or claims belonging to Bosch either in whole or in part. The customer shall bear the entire costs which have to be expended in order to cancel the attachment of Bosch's retained property or security by third parties and to re-create the product insofar as it is impossible to retrieve it from the third parties.

10.6 In case of default in payment or any other culpable violation of material contractual obligations by the customer Bosch has the right to demand the return of products to which Bosch has retained title or in which Bosch holds an equitable lien. If Bosch makes use of such right, this shall only constitute rescission of the contract if Bosch expressly declares that the contract is being rescinded.

10.7 If the customer files a petition for insolvency proceedings to be commenced Bosch is entitled to rescind the contract and demand the immediate return of the goods delivered.

10.8 If the value of the security existing for Bosch exceeds the amount of or claims by a total of over 10%, Bosch shall release security to this extent at Bosch's discretion at the customer's request.

## **11. Cancellation**

- 11.1 In the event of the customer's acting in breach of contract, in particular in case of default of payment, Bosch has the right, notwithstanding Bosch's other contractual and statutory rights, to withdraw from the contract after expiry of a reasonable extended deadline.
- 11.2 Bosch has the right to withdraw from the contract without setting an extended deadline if the customer suspends its payments or if the customer files for insolvency proceedings or similar proceedings to be instituted with respect to its assets for debt settlement.
- 11.3 Bosch is also entitled to withdraw from the contract without setting an extended deadline if:
- (i) the customer's asset position should deteriorate materially or threaten to deteriorate and, as a result, the performance of a payment obligation to Bosch is jeopardized, or
  - (ii) if the customer is insolvent or over indebted.
- 11.4 After declaration of such withdrawal, the customer shall immediately grant Bosch or Bosch's agents access to the products to which Bosch has retained title and surrender them. After respective notification in good time Bosch may also otherwise market the products to which Bosch has retained title in order to satisfy Bosch's due claims against the customer.
- 11.5 Statutory rights and claims shall not be restricted by the provisions contained in this clause 11.

## **12. Confidentiality**

- 12.1 All of the business and technical information stemming from Bosch (including characteristics which can be deduced from goods or software delivered and other knowledge or experience) shall be kept secret with respect to third parties if and as long as such information is not proven to be public knowledge or determined by Bosch to be resold by the customer and it may only be made available to those people within the customer's own operation who necessarily have to be included in the use thereof and who are also committed to secrecy; the information shall remain Bosch's exclusive property. Without Bosch's prior written consent such information may not be duplicated or commercially used. At Bosch's request all information stemming from Bosch (including, if applicable, any copies or duplicates prepared) and goods made available on loan must be returned to Bosch immediately in full or destroyed and a proof of the destruction sent to Bosch.
- 12.2 Bosch reserves all rights to the information mentioned in clause 11.1 above (including copyright and the right to file applications for industrial property rights such as patents, utility models, semiconductor protection etc.).

## **13. Payment Terms**

- 13.1 Except as otherwise agreed in writing, payment shall be effected on pre-payment without any deductions whatsoever. Bosch may also agree to deviating payment terms (e.g. delivery on open invoice) depending on the customer's credit rating provided by credit agencies (e.g. D&B) or other corresponding institutes.
- 13.2 Bosch is entitled to offset payments made against the oldest claim due.
- 13.3 In case of delayed payment Bosch is entitled to charge default interest amounting to 9% per annum above the base interest rate. The right to assert a claim on account of further damage is not excluded.

13.4 Payment by bill of exchange is only admissible following prior agreement with Bosch. Bosch only accepts bills of exchange and checks on account of performance and they shall not be deemed to constitute payment until honored.

13.5 If the customer is in arrears with payments Bosch shall be entitled to demand immediate cash payment of all claims arising from the business relationship which are due and against which there is no defense. This right shall not be barred by a deferral of payment or by the acceptance of bills of exchange or checks.

13.6 The customer shall only have the right to withhold payments or to offset counter claims insofar as the customer's counter claims are undisputed or ruled with res judicata effect by a court of law.

## **14. Export control Provisions**

14.1 Each party is entitled to refuse to perform its obligations under this contract insofar as the foreign trade law, including, without limitation, national and international (re-)export control and customs regulations, including embargos and other sanctions, which is applicable to this contract and/or the performance of the contract (hereinafter "Foreign Trade Law") render impossible or prohibit the fulfillment of obligations under this contract. In such cases, either party is entitled to terminate this contract in whole or in part to the extent that the Foreign Trade Law makes it impossible or prohibits the proper fulfillment of obligations under this contract. If, in the event of partial termination, a partial performance is excluded for technical or legal reasons or if one party has no interest in a partial performance, the termination will end the contract in its entirety.

14.2 In case of delay in the performance of obligations under this contract caused by licensing, authorization or similar requirements under Foreign Trade Law (hereinafter "Authorization"), the agreed deadlines and dates shall be extended/postponed by the period between the conclusion of the contract and the granting of the Authorization. In the event an Authorization be denied or not granted within 12 months after filing the application, either party is entitled to terminate or rescind from the contract in whole or in part insofar as the performance of the obligation requires this Authorization. If a partial performance is excluded for technical or legal reasons or if one party has no interest in a partial performance, the termination will end the contract in its entirety.

14.3 Each party shall notify the other party within a reasonable time period upon becoming aware of a Foreign Trade Law, which may prohibit or render impossible performance according to clause 1, or delay performance according to clause 2.

14.4 Upon request, the customer shall provide any information and documents that Bosch requires to comply with Foreign Trade Law or that authorities request from Bosch. This includes information and documentation including, without limitation, on the end user, the destination and the intended (end-)use of the Deliveries and Services. Bosch may, in its sole discretion, refuse to perform its obligations under this contract or terminate the contract, if the customer does not provide Bosch with such information or documents within a reasonable time period set by Bosch.

14.5 In the event that the customer provides to any third party (specifically including any affiliate of the customer) any Deliveries and Services, the customer shall comply with applicable Foreign Trade Law, insofar as customer's non-compliance could lead to a violation of Bosch's obligations to act or to refrain under Foreign Trade Law.

Bosch is entitled to refuse to perform its obligations under this contract to the extent that customer's breach of duty could lead to a breach of Bosch's obligation to act or refrain under Foreign Trade Law, or to terminate the contract for cause, if the customer breaches this obligation.

14.6 Insofar as the customer purchases products from Bosch that fall under the scope of Article 12g of Regulation (EU) No. 833/2014 or Article 8g of Regulation (EC) No. 765/2006 as amended, the following shall apply:

(i) The customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods or technology supplied under or in connection with this contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 or Article 8g of Regulation (EU) No. 765/2006, as amended from time to time.

(ii) The customer shall undertake its best efforts to ensure that the purpose of clause 14.6 (i) is not frustrated by any third parties further down the commercial chain, including by possible resellers.

(iii) The customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of clause 14.6 (i).

(iv) If the customer breaches clause 14.6 (i), (ii), or (iii), at least negligently, Bosch is entitled to immediately cease further deliveries to the customer and to terminate this contract and any contracts concluded under this contract at any time, insofar as these have not yet been fully performed. In this case, a previous warning letter to be issued before the termination notice shall not be required. The statutory right of both parties to terminate this contract for cause shall not be affected by this.

(v) The customer shall immediately inform Bosch about any problems in applying clause 14.6 (i), (ii), or (iii), including any relevant activities by third parties that could frustrate the purpose of clause 14.6 (i). The customer shall make available to Bosch information

concerning compliance with the obligations under clause 14.6 (i), (ii), or (iii) within two weeks of the simple request of such information.

14.7 For delivery of goods across customs borders to Bosch, the customer is obliged to provide Bosch with all required documents and information such as commercial invoice and delivery note, for a complete and correct import customs declaration to the shipment. In the case of free of charge deliveries to Bosch, the customer is obliged to declare a value, which reflects a fair market price as well as the note "For Customs Purpose Only" in the pro forma invoice. The value has to contain all components of the good such as hardware and respectively software.

14.8 Unless explicitly agreed otherwise in written form in the delivery or quotation documents, the customs-cross-border supply or provision of software, technology or other data (e.g. map data) shall be performed exclusively by electronic means (e.g. e-mail or download). This clause does not cover the supply of embedded software (software which is flashed on hardware).

## 15. Miscellaneous

15.1 If one of the provisions of these Terms and Conditions and the further contracts reached should be or become ineffective, this shall not affect the validity of the remainder of the Terms and Conditions. The contracting parties are obliged to replace the ineffective provision by a ruling approximating most closely the economic success intended by the ineffective provision.

15.2 The courts of Bielefeld, Germany or at Bosch discretion, if the customer is,

- a registered merchant or
- has no general domestic place of jurisdiction or
- has moved its domicile or normal place of abode abroad after entering into the contract or if its domicile or normal place of abode is unknown, the courts with jurisdiction at the registered office of the operating facility carrying out the order, shall have jurisdiction and venue. Bosch is also entitled to take legal action at the court having jurisdiction at the registered office or a branch office of the customer.

15.3 All legal relationships between Bosch and the customer shall be exclusively bound by and construed in accordance with the laws of the Federal Republic of Germany excluding the rules on the conflict of laws and the United Nations Convention on the International Sale of Goods (CISG).

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