

GENERAL TERMS AND CONDITIONS OF BAUER-POSEIDON KOMPRESSOREN GES.M.B.H.

FOR SALES AGREEMENTS AND CONTRACTS FOR WORK

I. General - Applicability:

1. These General Terms and Conditions ("GTC") shall apply to all sales agreements and contracts for work on any products and services, including accessories and spare parts, distributed by Bauer-Poseidon Kompressoren GmbH (hereinafter "Bauer-Poseidon") as well as to services like installations and maintenance. Deviating regulations, in particular conflicting terms and conditions of the contracting party of Bauer-Poseidon (hereinafter "Contracting Party") shall only be deemed agreed if such terms and conditions are explicitly confirmed by Bauer-Poseidon in writing to be applicable instead of these Terms and Conditions. Performance under the contract on the part of Bauer-Poseidon shall therefore not be considered a consent to deviating terms and conditions of the Contracting Party.

2. In case of an ongoing business relationship these GTC shall apply as amended from time to time also to all future transactions, even if no special indication or reference is made thereto, in particular also in case of calls or subsequent orders given orally or over the phone.

3. Business correspondence printed by Bauer-Poseidon via electronic data processing or sent by e-mail, such as acknowledgments of orders, invoices, credit notes, statements of account and payment reminders shall be valid and legally binding also if not signed.

II. Cost estimates:

1. Cost estimates for contracts for work shall be subject to a charge. Charges paid for a cost estimate shall be credited if an order is placed on the basis of such cost estimate.

2. Cost estimates for repairs shall be non-binding. The actual expenses incurred for material and labour shall be invoiced.

III. Offers and conclusion of contracts:

1. Offers of Bauer-Poseidon shall be non-binding. Orders shall become binding only upon issuance of a written acknowledgement of order unless the service ordered has already been rendered or invoiced by Bauer-Poseidon.

2. Oral agreements shall require written confirmation by Bauer-Poseidon in order to be effective.

3. Objectively justified and reasonable changes of the deliveries and/or services to be rendered, in particular reasonable delays in delivery, shall be deemed approved in advance.

4. In electronic commerce the parties waive applicability of the regulations of Section 9 para. 1 and of Section 10 para. 2 ECG (E-Commerce Act). This shall not apply to consumer transactions. Confirmation of receipt of electronic orders (e-mail) shall not be deemed a binding acknowledgement of the order. The confirmation of receipt may, however, be linked to an acknowledgement of order. In case of orders in electronic commerce the text of the contract shall be stored by Bauer-Poseidon and shall be sent to the Contracting Party upon request together with these GTC via e-mail.

5. If Bauer-Poseidon needs an export licence for fulfilment of its performance obligations, the contract shall be concluded subject to the condition precedent that an export licence will be issued. Bauer-Poseidon shall be obliged to apply for a relevant licence with the competent authority. In case the application is dismissed, Bauer-Poseidon shall not be subject to any further obligations.

6. Proprietary rights and copyrights, in particular rights to reproduce and distribute illustrations, drawings, calculations and other documents, which come into the possession of the Contracting Party in connection with an offer of Bauer-Poseidon, shall be reserved. These documents shall not be made accessible to third parties except in cases of reselling in accordance with their purpose and they shall be returned to Bauer-Poseidon upon request if the contract is not concluded or fails.

7. The Contracting Party shall be liable for accuracy of the documents provided by him, such as, e.g. specimens and drawings. In the course of producing the goods in accordance with the drawing, specimen or other specifications of the Contracting Party proprietary rights of third parties are infringed. The Contracting Party shall indemnify Bauer-Poseidon from all claims of the holder of the proprietary rights.

8. Repair orders shall be deemed given to the extent they are necessary for repair of the defect, even if the necessity of individual works or of replacing certain items occurs only in the course of the work.

IV. Prices:

1. Unless otherwise agreed, the prices stated by Bauer-Poseidon shall apply for the term of the agreed delivery period, with no packaging, ex works Wiener Neudorf. The costs of packaging, loading, transport and insurance shall be borne by the Contracting Party. The prices shall be deemed exclusive of statutory VAT and, in case of export orders, exclusive of customs duties and export turnover tax. Gross prices shall be stated, net prices are excluded.

2. If the list price applicable at the date of delivery is above the price agreed with the Contracting Party, such higher list price shall apply unless explicitly agreed otherwise, if delivery is effected later than four months after conclusion of the contract for reasons for which the Contracting Party is responsible, unless the invoice has already been prepared and has been paid by the Contracting Party.

3. If the delivery dates are exceeded for reasons for which Bauer-Poseidon is not responsible, Bauer-Poseidon shall reserve the right to claim costs increases. This shall not apply to consumer transactions. If between conclusion of the contract and performance of the service changes in labour costs and/or procurement costs of the materials to be used occur, as by law, regulation, collective bargaining agreement, articles of association, official statistics, other official measurements and weights or changes of world market prices, the relevant prices shall be increased or reduced accordingly unless there are less than three months between the date the order is placed and performance of the services.

V. Tolerance in performance data:

1. It is agreed that the product specifications of Bauer-Poseidon and of the manufacturer, if applicable, shall determine the quality of the goods or services. Bauer-Poseidon shall be responsible for public statements, in particular in advertising, only to the extent that it has caused the same and that the purchase decision of the Contracting Party has actually been influenced thereby. The data, drawings, illustrations, performance specifications, measurements and weights or other performance data stated in catalogues, price lists, leaflets, circulars, other advertising, other publications or in the documents pertaining to the offer shall be approximate as customary in the industry and, therefore, be relevant to a limited degree. The said data shall only be guaranteed if expressly so described by Bauer-Poseidon in writing. Reference to standards of standardisation organisations shall only serve the purpose of more detailed description of the goods and shall not establish a guarantee unless this has been expressly agreed.

2. Reasonable deviations (tolerances) of performance data shall constitute no defect of quality. This shall apply to the following in particular:

- Delivery volume of breathable air compressor: measured with bottle filling of G20bar: +/- 5%
- Delivery volume for industrial air and gas compressor: measured along the lines of VDMA 4382 by flowmeter against 0.8 times and pressure: +/- 5%
- power consumption: kW +/- 5%
- compressor revolutions: 1/min +/- 5%
- operating pressure (end pressure): bar +/- 5%
- safety valve adjustment pressure: bar +/- 5%
- operating voltage: Volt +/- 10%, frequency Hz +/- 1
- sound pressure in cockpit at a 1 m distance: +/- 2db
- net weight: kg +/- 10%
- measurements: m +/- 10%

3. Bauer-Poseidon shall be free to carry out changes in the construction of devices without prior notice. In the event that such changes are necessary due to the construction or are customary in trade and reasonable for the Contracting Party, the Contracting Party may not claim that in case of changes in the construction within a running series devices already delivered must be upgraded.

VI. Delivery:

1. Unless otherwise agreed, Bauer-Poseidon reserves the right to choose the mode of shipment, with any liability being excluded.

2. Packaging shall not be taken back by Bauer-Poseidon.

3. The transport risk shall in any case be borne by the Contracting Party even if freight-free delivery with its own or third-party means of transport was agreed. Transport insurance shall be taken out by Bauer-Poseidon only upon written agreement and only at the cost of the Contracting Party.

4. To the extent that delivery period/dates and completion period/dates have been agreed, the same shall always be non-binding unless a fixed date has been expressly agreed. In the absence of an agreement to the contrary the delivery period shall commence upon conclusion of the contract and shall in no case commence prior to provision of the documents and official permits to be procured by the Contracting Party and not before the down-payment has been effected by him. The Contracting Party shall be obliged to accept the subject-matter of the contract or parts thereof with debt-releasing effect even before an agreed delivery date.

5. If commencement of the service or rendering of the service itself is delayed and if such delay is not due to circumstances for which Bauer-Poseidon is responsible, the delivery period/dates and completion period/dates shall in any case be extended by the duration of such circumstances. In particular, this shall apply in case of force majeure and other uncontrollable delays (e.g., catastrophe, war, riot, fire, strike, embargo, lack of means of transport, delay in transport and customs clearance, transport damage, shortage in energy and raw materials). These circumstances shall lead to an extension of the delivery period also if they occur with an upstream supplier. Additional costs accruing due to delays shall be borne by the Contracting

Party if the Contracting Party is not responsible for the circumstances from which such delays have resulted. In case of a delay in delivery of more than four months the Contracting Party shall be entitled to reject delivery and to rescind the contract.

6. In the cases described in the above paragraph Bauer-Poseidon shall be free to rescind the contract without being liable for damages; this shall, at the option of Bauer-Poseidon, also apply to follow-up deliveries not yet due.

7. If the Contracting Party fails to eliminate the circumstances for which he is responsible and which caused the delay within a reasonable period granted to him by Bauer-Poseidon, Bauer-Poseidon shall be entitled to otherwise dispose of the material and equipment ordered by it for performance of the service. If performance of the service is continued, all periods and dates shall then be extended by the period required for subsequent procurement of those materials and equipment otherwise used.

8. If the agreed delivery period is exceeded and Bauer-Poseidon is responsible therefor, the Contracting Party shall be entitled to rescind the contract by registered letter with regard to all items not yet delivered after having granted a grace period of fourteen days.

VII. Acceptance test:

1. If the Contracting Party requests an acceptance test, this shall be expressly agreed with Bauer-Poseidon in writing upon conclusion of the contract. Unless different regulations have been agreed, the acceptance test shall be carried out by Bauer-Poseidon during normal working hours at the place of manufacture or at a location to be determined by Bauer-Poseidon. In this respect the general practice of the relevant branch of industry shall be relevant to the acceptance test.

2. Bauer-Poseidon shall timely inform Contracting Party of the acceptance test so that the Contracting Party will be able to be present at the test or have himself represented by an authorised representative.

3. If in the course of the acceptance test the delivery item turns out to be not in accordance with the contract, Bauer-Poseidon shall repair any defects without delay and shall put the delivery item into the contractually agreed condition. The Contracting Party may request a new test only in case of material defects.

4. Immediately after an acceptance test an acceptance record shall be prepared. If the acceptance test shows conforming and flawless functioning of the delivery item, this shall in any case be confirmed by both contracting parties. If the Contracting Party or his authorised representative is not present at the acceptance test despite timely notification by Bauer-Poseidon, the acceptance record shall only be signed by Bauer-Poseidon. Bauer-Poseidon shall in any case send a copy of the acceptance record to the Contracting Party, the correctness of which cannot be contested by the Contracting Party even if he or his authorised representative had not been able to sign the same due to absence.

5. Unless otherwise agreed, each contracting party shall bear the costs incurred by it for the effected acceptance test.

VIII. Acceptance:

1. If delivery at the agreed date cannot be effected due to reasons for which the contractibility is not to be held responsible, the Contracting Party, at that point, at the latest, risk and costs shall pass to the Contracting Party. In addition, Bauer-Poseidon shall be entitled to its option to stipulate the subject-matter of the contract or to store it in any manner in the name and for the account of the Contracting Party. At that point of time the object of the contract shall be considered delivered in accordance with the contract in all respects. The Contracting Party shall be obliged to immediately effect the payments that are due in case of delivery or due to delivery.

2. If the transaction is based on a contract for work, the Contracting Party shall be in delay of acceptance of the work if he does not accept the same within one week of delivery, notice of completion or issuance of the invoice.

3. In case of a rescission of the contract Bauer-Poseidon shall be entitled to claim from the Contracting Party a contractual penalty in the amount of the gross price compensation for work that is not subject to a judicial right of reduction; any further claims for damages vis-à-vis the Contracting Party shall remain unaffected.

4. Acceptance shall be deemed effected if the work is used by the Contracting Party without notice of defect for a period of fourteen days after delivery, notice of completion or issuance of an invoice and Bauer-Poseidon has advised this consequence upon delivery, notice of completion or issuance of the invoice.

IX. Payment:

1. Payments shall be made in accordance with agreed payment conditions. The Contracting Party shall comply with turnover tax legislation.

2. If delays in performance of services as defined in Clause VII. occur, Bauer-Poseidon shall be entitled to issue invoices regarding services rendered so far and to call for immediate payment of the same.

3. In case the payment date is exceeded or in case of a delay in acceptance or acceptance, Bauer-Poseidon shall be entitled to charge default interest and compound interest at the rate of 8% above the base interest rate of Oesterreichische Nationalbank (Austrian central bank), however at least 12% p.a. In case of default the Contracting Party shall be obliged to pay, besides default interest, all other related procedural and non-procedural costs of collection - vis-à-vis consumers in accordance with the lawyer's tariff - as well as the costs of legal counsel commissioned by Bauer-Poseidon. In addition, Bauer-Poseidon shall be entitled to postpone performance of its own obligations until settlement of unpaid balances, to refuse a return of the object or the cessation of the contract or to rescind the contract after having granted a reasonable grace period. In case of a rescission of the contract the Contracting Party shall, upon request of Bauer-Poseidon, return goods already delivered and shall compensate Bauer-Poseidon for the incurred loss of value of the goods and reimburse all reasonable expenses incurred by Bauer-Poseidon in the course of performance of the contract.

4. The total residual amount receivable of Bauer-Poseidon shall become due for immediate payment without consideration of any terms if execution is levied unsuccessfully with regard to the assets of the Contracting Party, forced sale of real property or receivable is allowed or if enforcement is otherwise reduced (in particular in case insolvency proceedings are opened). In such cases Bauer-Poseidon shall be entitled to effect outstanding services only against advance payment or provision of security and to rescind the contract without granting a grace period or to claim damages on grounds of non-performance. In addition, Bauer-Poseidon shall in such cases be entitled to take back products already delivered at the cost of the Contract while the contract is not being rescinded thereby. The Contracting Party shall permit such a measure, which is why actions of trespass shall be excluded.

X. Retention of title:

1. The delivered goods shall remain the property of Bauer-Poseidon until full payment of the purchase price as well as until fulfilment of any and all claims of Bauer-Poseidon (also regarding interest, expenses and costs).

2. Bauer-Poseidon shall be entitled to mark the goods delivered - and installed, if applicable - as its property at the cost of the Contracting Party in a manner considered appropriate by Bauer-Poseidon and easily noticeable for everybody. The Contracting Party acknowledges the fact that high-handed removal of the markings before title to the said goods passes shall result in the agreed remuneration becoming due for immediate payment.

3. Within the scope of proper business operation the Contracting Party shall be entitled to re-sell and transfer the products delivered by Bauer-Poseidon. The Contracting Party already at this point assigns to Bauer-Poseidon all his claims arising from reselling of the goods delivered by Bauer-Poseidon. If the Contracting Party enters the claims under the reselling of the goods into a current account, he shall assign his claim under the final balance to Bauer-Poseidon, limited as to the amount to the purchase price claimed by Bauer-Poseidon for the goods resold by the Contracting Party. Bauer-Poseidon shall accept such assignments.

4. To the extent that the Contracting Party processes the goods delivered by Bauer-Poseidon, Bauer-Poseidon shall become the owner of the new movable object produced. If the produced object is not exclusively made out of Bauer-Poseidon goods, Bauer-Poseidon shall acquire co-ownership of the produced object; the co-ownership share of Bauer-Poseidon shall depend on the proportion of the value of its goods to the value of the remaining items which were processed in the course of production of the new item. Clause X.3 shall apply *mutatis mutandis*.

5. Bauer-Poseidon revocably authorises the Contracting Party to collect the claims assigned to it. The authorisation to collect claims shall also expire without revocation as soon as the Contracting Party becomes insolvent or insolvency is impending on him or if he becomes over-indebted or if a serious deterioration of his assets has occurred. In the event of expiration of the authorisation to collect claims the Contracting Party shall be obliged to give notice to the third-party debtors of the assignment of the claims to Bauer-Poseidon without delay and inform Bauer-Poseidon of such notice of assignment. The Contracting Party shall also be obliged to make available to Bauer-Poseidon upon request all information and documents necessary for assertion of the assigned claims.

6. In the cases listed in Clauses X.2. to X.5. the Contracting Party undertakes to enter a corresponding remark in his books or on his invoices. Upon request the Contracting Party shall inform Bauer-Poseidon about the assigned claim and his debtor and shall make available all information and documents necessary for collection of his claim and shall notify the third-party debtor of such assignment. In case of an attachment or other seizure the Contracting Party shall be obliged to claim the title of Bauer-Poseidon, to immediately inform Bauer-Poseidon and to reimburse Bauer-Poseidon all costs for preservation of its property. This shall not apply to consumer transactions.

7. Taking back of goods by Bauer-Poseidon shall not be considered a rescission of the contract. Any and all rights of Bauer-Poseidon under the legal transaction,

including the right to claim damages on grounds of non-performance shall remain in effect.

XI. Warranty:

1. In accordance with and subject to Section 925 ABGG (Austrian General Civil Code) there shall be no warranty for obvious defects which are visible already at delivery, acceptance or putting into operation of the contractual service.

2. The warranty period shall be one year and shall commence upon delivery to the Contracting Party or in case of non-delivery not later than upon issuance of the invoice. If the Contracting Party uses the service already prior to delivery, the warranty period shall commence already at that time.

3. Defects shall be notified immediately and not later than 8 days after delivery of the subject-matter of the contract, in case of hidden defects upon the defect becoming noticeable, by registered letter stating nature and scope of the defect; otherwise any claims shall be excluded. If a notice of a defect is not given or is not timely given, the rendered services shall be deemed accepted. In deviation from Section 924 Austrian General Civil Code the Contracting Party shall prove that the defect had existed already at the time of delivery of the service rendered.

4. The warranty obligation of Bauer-Poseidon shall at its discretion be limited to improvement or replacement of the defective parts or price reduction. In connection with improvement/replacement Bauer-Poseidon shall be entitled to have the defective goods or the defective parts sent back for subsequent improvement. In the absence of an agreement to the contrary the Contracting Party shall in this case bear the costs and risk of transport. The defective goods replaced shall remain with Bauer-Poseidon. Bauer-Poseidon shall bear the costs of repair of defects not carried out by the Contracting Party only if it has given its written consent thereto.

5. Bauer-Poseidon shall be obliged to provide warranty only if the Contracting Party has completely fulfilled his payment obligations.

6. If an electrical system is produced on the basis of data submitted by the Contracting Party, the Contracting Party shall bear the risk vis-à-vis Bauer-Poseidon for the construction and shall be liable for all damage (also caused by infringement of proprietary rights of third parties) and shall indemnify and hold Bauer-Poseidon harmless.

7. Bauer-Poseidon shall be equally liable for defects of items only described as to their nature and for defects of concrete goods; in particular, the procurement obligation of Bauer-Poseidon shall not establish strict liability on the part of Bauer-Poseidon for damage resulting from such defect.

8. To the extent that the parties have not excluded the claim for reimbursement of expenses as defined by Section 933b Austrian General Civil Code by granting of an equivalent compensation, the Contracting Party shall be obliged to refuse improvement/replacement in case the item was resold to a consumer vis-à-vis the consumer according to Section 932 Austrian General Civil Code, if this is impossible or only possible with unreasonably high expenses. In case of a resale of the item from the Contracting Party to an entrepreneur, he shall adjust such entrepreneur to the obligation to refuse subsequent performance in case of a resale of the item to a consumer if such performance is only possible with unreasonably costs involved. Bauer-Poseidon shall reimburse the Contracting Party the expenses necessary for subsequent performance under Section 933b Austrian General Civil Code only if they are not impossible as defined by Section 932 para 4 Austrian General Civil Code or involve unreasonably high expenses.

9. Materials subject to wear and tear shall only have the useful life in accordance with the relevant state of the art. There shall be no warranty, *inter alia*, in the following cases: inappropriate or improper use, incorrect installation and/or putting into operation by one or several third parties, natural wear and tear, incorrect or negligent treatment, improper maintenance, inappropriate operating resources, defective construction work, unsuitable construction ground, chemical, electrochemical or electrical impacts unless Bauer-Poseidon is responsible for the same. If the Contracting Party or a third party inappropriately carries out subsequent improvement, there shall be no liability on the part of Bauer-Poseidon for any resulting consequences. The same shall apply to changes of the delivery item made without the prior consent of Bauer-Poseidon.

10. Clause XI. shall not apply to consumer transactions.

XII. Damages:

1. Liability of Bauer-Poseidon for simply gross negligence shall, except for personal injury, be excluded. However, Bauer-Poseidon shall not be liable for consequential damage or lost profit. In deviation therefrom the following shall apply to consumers: Liability of Bauer-Poseidon for slight negligence shall, except for personal injury, be excluded. In case of liability on the part of Bauer-Poseidon it shall be limited to EUR 5 million for property damage and to EUR 50,000 for pecuniary losses.

2. Full and timely notice when occurrence of the damage becomes noticeable as defined by Clause XI. shall be the prerequisite for claims for damages vis-à-vis Bauer-Poseidon. This shall not apply to consumer transactions.

3. The Contracting Party may at first only claim improvement or replacement of the item/work as damages. Only if either is impossible or involves unreasonably efforts on the part of Bauer-Poseidon may the Contracting Party immediately claim monetary damages.

4. Claims for damages shall become statute-barred within one year of knowledge of the damage and of the party who caused the damage and in any case two years after passing of the risk. The Contracting Party shall prove cause, illegality and fault. This provision shall not apply to consumer transactions.

XIII. Product liability:

1. The services rendered as well as the goods, devices and systems delivered shall always offer only that degree of safety which may be expected on the basis of licensing provisions, handling and operating manuals or other regulations on maintenance and handling, in particular with regard to prescribed inspections of devices and systems or on the basis of any other information provided.

2. Claims of recourse, if any, which are raised by the Contracting Party or by third parties against Bauer-Poseidon on grounds of product liability shall be excluded. The Contracting Party represents that he shall include this limitation of liability in all agreements with business undertakings and requires them to pass on such limitation and that he shall indemnify Bauer-Poseidon from any such liabilities vis-à-vis business undertakings.

3. Claims for compensation shall forfeit five years after the date at which the items were put onto the market. The Contracting Party shall impose such time period on his customers with legally binding effect.

4. Claims of recourse shall exist only to the extent that the Contracting Party proves that the defect has occurred before the supplier put the item onto the market.

5. Any further liability on the part of Bauer-Poseidon under the Product Liability Act for damage caused by non-compliance with user manuals - also with regard to the required risks - or violations of statutory and other standards or information shall be excluded.

XIV. Set-off - right of retention/right to withhold performance - non-assignment:

1. The Contracting Party shall be entitled to offset claims against counterclaims only if the same have been accepted in writing by Bauer-Poseidon or if they have been ascertained in a non-appealable manner.

2. The Contracting Party shall not be entitled to assert a right to withhold performance or a right of retention on whatsoever legal ground unless such rights are based on a defect of the purchased goods for which Bauer-Poseidon has already received that portion of the fee which is equal to the value of its performance, or are based on counterclaims of the Contracting Party which have been accepted in writing by Bauer-Poseidon and have been ascertained in a non-appealable manner.

3. The Contracting Party shall not be entitled to assign or have collected by third parties any claims to which he is entitled vis-à-vis Bauer-Poseidon.

4. Clause XIV shall not apply to consumer transactions.

XV. Place of performance - applicable law - place of jurisdiction:

1. The place of performance for all claims under the business relationship with the Contracting Party shall be Wiener Neudorf. In deviation therefrom the place of performance regarding delivery obligations of Bauer-Poseidon shall be the location of the plant or warehouse of Bauer-Poseidon instructed to effect the delivery.

2. The parties agree that Austrian law shall apply exclusively and that UN Sales Law (CISG) shall be excluded.

3. All disputes arising out of or in connection with a contractual relationship in which Bauer-Poseidon is a party shall at the option of Bauer-Poseidon be settled by the court in Wiener Neudorf having jurisdiction over the subject-matter or the court having general jurisdiction over the Contracting Party. This provision shall not apply to consumer transactions.

XVI. Other provisions:

1. If any of the provisions of these GTC are or become ineffective in whole or in part, the remaining provisions shall not be affected thereby. The ineffective provision shall be replaced by a content that comes as close as possible to the economic purpose of the ineffective provision in a legally permissible way.

2. Any agreements, subsequent modifications, amendments, side agreements and the like shall be valid only if made in writing. This shall also apply to a waiver of the formal requirement of written form.