

# General Terms and Conditions of Sale

## 1. General

These General Terms and Conditions of Sale shall apply in as much as and so far as the parties have made no other written agreements in individual cases. The contract shall be effective only upon Bühler AG's written confirmation of order. Any modifications have to be implemented by annex to be lawfully signed by both parties.

## 2. Drawings technical documentation and Software

Brochures and catalogues are not binding. Data contained in drawings and technical documents are only binding if they are explicitly stipulated as such.

Bühler AG reserves all rights to the drawings and technical documents delivered by Bühler AG. They shall not be made available to third parties. If no order is placed, all drawings and technical documents are to be returned immediately to Bühler AG.

As far as software is included in supply, all rights to that software remain the property of Bühler AG. Bühler AG grants to the customer a non-exclusive right to use the delivered software, whereby the right to sublicense shall be excluded. The right is limited to the contractually agreed use. The software may only be reproduced or made available to third parties with the prior written consent of Bühler AG.

## 3. Prices

All prices shall be deemed to be net, ex works, in freely available Swiss francs, without any deduction whatsoever.

Any and all additional charges, such as but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer.

Likewise, the customer shall bear all value-added taxes, sales taxes, profit taxes, income taxes, social contributions, registration fees, as well as all other kinds of taxes, fees, levies, custom duties and the like which are levied against Bühler AG, its related companies, its factories or its personnel in connection with the contract.

## 4. Terms of payment

According to the confirmation of order. The agreed dates of payment shall also be observed by the customer even if transport, delivery, erection, commissioning or taking over is delayed or prevented due to reasons beyond the control of Bühler AG, or if minor parts are missing or if post delivery work, which does not prevent the supplies from being used, is necessary. The retention of payments or the setting-off against any counter-claims shall be excluded.

If the customer is overdue with an agreed payment, Bühler AG, without prejudice to its legal rights, shall be entitled to suspend the further execution of the contract, to stop the fabrication or to retain the deliveries which are ready for dispatch.

With effect from the agreed due date, the customer shall pay interest on the outstanding amount at a rate of 4 % over the 12-months-LIBOR for the contractual reference currency valid at the due date. If the customer is overdue with a payment or the establishment of an agreed security for more than two weeks, the entire balance of payment shall be due immediately.

## 5. Retention of title

Bühler AG remains the owner of the entire supplies until the complete receipt of the agreed payments. The customer authorises Bühler AG to enter the retention of title in public registers or records, and shall be obliged to give any signatures requested.

## 6. Delivery time

The delivery time shall start as soon as the contract is entered into, the necessary technical documents of the customer have arrived completely at Bühler AG, the agreed payments and securities are given, and the required official permits are granted. The delivery time shall be deemed to be completed when the delivery is ready for dispatch at the factory within such time.

The delivery time shall be reasonably extended if conditions such as epidemics, acts of God, mobilisation, war, acts of piracy, revolution, labour conflicts, boycotts, accidents, serious breakdown in the works or official actions prevent the compliance with the delivery date.

The delivery time shall be extended if the customer changes the original order or is overdue with its contractual obligations, especially if the customer has delayed the delivery of the necessary documents, has delayed the agreed payments and securities or is overdue with the work to be carried out by the customer.

## 7. Packing

Packing shall not be returnable.

## 8. Erection

The customer is solely responsible for erection and commissioning of the supplies. If Bühler AG assumes the responsibility for the erection, supervision of the erection and/or commissioning of the supplies, the resulting costs will be charged to the customer additionally.

If Bühler AG is entrusted with supervision of the erection without the erection being carried out by personnel of Bühler AG, Bühler AG is liable for defects, delay or failure to fulfil performance guarantees only if the customer proves these circumstances to be attributable to gross negligence of Bühler AG in the instruction or supervision of the local personnel.

The tools used, auxiliary materials as well as surplus materials provided by Bühler AG remain the property of Bühler AG and are to be returned upon termination of the erection.

Furthermore, the General Delegation and Erection Conditions of Bühler AG are applicable.

## 9. Free consultation

Any free of charge technical consultation shall be outside of any pre-contractual or contractual obligations. Bühler AG shall not be liable for free consultations, especially with respect to the correctness of the contents of the consultation.

## 10. Liability and insurance

The benefit and the risk of the supplies shall pass to the customer with the readiness for dispatch at works. If dispatch is delayed for reasons beyond the control of Bühler AG, the supplies are stored and insured at the expense and the risk of the customer.

Transport shall be executed at the expense and risk of the customer. The customer shall be responsible for taking insurance of the supplies against risks of any kind.

## 11. Place of performance

Unless otherwise agreed, place of performance for all contractual obligations is Uzwil/Switzerland.

## 12. Taking-over

The supplies shall be considered as having been taken over if no substantiated written complaint is made from the customer within two weeks for single machines, or within two months for complete plants, calculated from the date of delivery at the place of performance. The taking-over is further considered as being completed if the customer refuses to participate in an agreed taking-over inspection or does not sign a taking-over certificate reflecting the facts truthfully.

Bühler AG shall not later than at the date of taking-over, provide information and drawings which are necessary to permit the customer to commission, operate and maintain the supplies. Bühler AG shall not be obliged to provide manufacturing drawings of the supplies or of spare parts.

## 13. Warranty and liability for defects

The warranty period is 12 months from readiness for dispatch. The warranty by Bühler AG is subject to the timely fulfilment of the agreed payment conditions by the customer.

Bühler AG shall be responsible to repair or replace any parts which, before the expiry of the warranty period, are proven to be unusable due to bad materials, faulty design or poor workmanship. The right to cancel the contract or reduce the purchase price shall be excluded. If a supply is still defective, despite a replacement or repair, Bühler AG is entitled to take back the defective supply against reimbursement of the received payments.

Excluded from Bühler AG's warranty and liability are all deficiencies beyond the control of Bühler AG, especially if resulting from normal wear and tear, false information from the customer, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, combination with non-original parts, installation, changes or repairs by the customer or third parties, etc.

If the customer proves that an express warranty with regard to performance, energy consumption, etc. is not achieved, the express warranty is valid only if Bühler AG, after the completed commissioning, has the opportunity to prove that the warranted parameters are achieved. The customer shall at its expense make available the necessary raw materials, energy, etc., as well as qualified personnel. If within two months from receiving the written complaint, Bühler AG is not given an opportunity to prove the warranted parameters, then those parameters are deemed to be proven.

## 14. Consequential damages

The warranty and liability claims of the customer are exhaustively covered by these conditions. As long as there are no specific mandatory laws to the contrary, in no case whatsoever shall the customer be entitled to contractual or tort claims for damages resulting from, but not limited to, loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damages. Bühler AG is only liable to compensate the customer for the costs of remedying defects in the supply itself.

## 15. Jurisdiction/applicable law

For any dispute resulting from this contract, the exclusive place of jurisdiction shall be the place of incorporation of the head office of the defendant party. The contract shall be exclusively governed by Swiss law.

**Bühler AG**  
**CH-9240 Uzwil**