



# Sales and delivery conditions

## Brun Marti Dytan AG (BMD)

### 1 Prices

#### 1.1 Delivery within Switzerland

The prices quoted for new installations include transport and installation costs. Clause 1.3 is reserved.

If intermediate storage is required, then the extra costs incurred for this (storage area, additional trips, organisational costs, etc.) shall be additionally charged to the buyer.

Transport or shipping costs for wear and spare parts are to be borne by the customer and are shown in a shipping item on the invoice.

#### 1.2 Overseas deliveries

The prices quoted do not include installation or transport costs. Special agreements are reserved. Clause 1.3 is reserved.

#### 1.3 Additional costs

All the additional costs for transport, insurances, permissions for export, transit, import and other permissions, certifications, all kinds of taxes, duties, fees, customs duties etc., and the related administrative costs that are charged in connection with the contract or its performance, shall be borne by the buyer. If such costs, taxes etc. are billed to BMD or its auxiliary persons, then these costs must be reimbursed by the buyer to BMD upon submission of the relevant documents.

If deliveries cannot be transported inside the building and assembled there, as provided for in the planning documents (construction plans, schedules, etc.) submitted to BMD when the order was placed, e.g. due to additional/other barriers, different transport situations, etc., then the additional costs (transport costs, planning costs, and organisation costs) shall be borne by the buyer.

#### 1.4 Price adjustments

BMD reserves the right to adjust prices if the wage rates or the material prices change between the date of the offer and the contractual performance. In this case, the price is adjusted according to the SWISSMEM price adjustment formula.

Prices can also be adjusted appropriately if the delivery deadline has been subsequently extended due to a reason specified in Clause 4.2, or if the type or scope of the agreed deliveries or services have changed, or if the material or the delivery performance have changed because the documents delivered by the buyer do not correspond to the actual circumstances or if the documents were incomplete, or if laws or regulations have changed.

### 2 Compliance with payment deadlines and default of payment

- 2.1 The buyer must meet the payment deadlines even if the transport, delivery, installation, commissioning or acceptance of deliveries and/or services are delayed or are no longer possible due to reasons for which BMD is not responsible, or if insignificant parts of the delivery are missing, or if rework proves to be necessary that does not render the use of the other deliveries impossible.



- 2.2 If the advance payments and/or the collateral to be provided upon the conclusion of the contract are not paid according to the contract terms, then BMD has the right to either adhere to the contract or to withdraw from the contract, and in both cases to demand additional compensation.
- 2.3 If the buyer is in arrears with regard to another payment/partial payment for any reason whatsoever, or if BMD is seriously concerned that it will not receive full or timely payments from the buyer owing to circumstances arising after the conclusion of contract, then BMD is entitled, without limitation of its legal rights, to suspend the further fulfilment of the contract and to withhold the deliveries that are ready for dispatch. This right shall be available till new payment and delivery conditions are agreed upon and BMD has received adequate collateral. If such an agreement cannot be made within a period that seems reasonable to BMD, or if BMD does not receive adequate collateral, then BMD has the right to withdraw from the contract and to demand compensation.
- 2.4 If the buyer does not adhere to the agreed payment deadlines, then it shall be liable, without reminder, to pay interest as from the agreed payment due date, at the interest rate that is customary at the domicile of the buyer, but not less than 4 per cent over the current 3-month CHF-LIBOR (SARON). The right to claim further damages is reserved.

### **3 Retention of title**

- 3.1 BMD shall remain the owner of all its deliveries, till it has received the full contractual payments.
- 3.2 The buyer is under the obligation to help implement measures that are required to protect the property of BMD and by signing the contract, the buyer agrees to this. The buyer authorises BMD, particularly upon conclusion of the contract, to enter or register the retention of title in public registers, books or the like, pursuant to the relevant federal state laws and to comply with all relevant formalities at the expense of the buyer.
- 3.3 The buyer must maintain the delivered objects at its own expense for the duration of the retention of title and insure them in favour of BMD against theft, breakage, fire, water, and other risks. Moreover, the buyer shall take all the measures to ensure that the title of the supplier is neither affected nor cancelled.

### **4 Process suppliers**

#### **4.1 Pre-requisites**

Fulfilment of the contractual obligations by the buyer is the pre-requisite for our compliance with deadlines.

The delivery date or the delivery deadline shall be deemed to have been met if partial or complete commissioning takes place on the agreed date.

#### **4.2 Extension of the delivery deadline**

The delivery deadline is extended or the delivery date is postponed if

- a) BMD has not received the details that it needs to fulfil the contract in good time, or if a buyer subsequently amends these details thus causing a delay in the provision of deliveries or services;
- b) obstacles arise which BMD cannot avert despite having exercised due care, regardless of whether these obstacles affect BMD, the buyer, or a third party. Examples of such obstacles are epidemics, pandemics, mobilisation, war, civil war, acts of terrorism, riot, political unrest, revolutions, sabotage, serious breakdowns, accidents, labour conflicts, de-



layed or faulty delivery of the necessary raw material, semi-finished and finished products, proved rejection of important parts, measures or omissions of public authorities, national or supranational institutions, embargos, unpredictable transport hindrances, fire, explosion, natural disasters;

- c) the buyer or the third party is behind schedule with the work to be done by it, or if the buyer or the third party has not fulfilled the contractual obligations, and particularly if the buyer does not comply with the payment conditions;
- d) the complete commissioning cannot take place due to reasons for which BMD is not responsible.

## **5 Default in delivery**

- 5.1 BMD shall not bear any damages due to delay.
- 5.2 Withdrawal from the contract and substitute performance are excluded.

## **6 Transfer of benefits and risks**

- 6.1 Once the deliveries are unloaded from the transport vehicle, the benefits and risks are completely transferred to the buyer. Non-timely partial/complete commissioning according to clause 4.1 does not revive the liability for accidental destruction / accidental damage.
- 6.2 Even interim storage, caused due to reasons for which BMD is not responsible, shall be considered as unloading of the delivery.

## **7 Test and acceptance, load test, approval of deliveries and services**

- 7.1 BMD shall agree on a date for test and acceptance with the buyer in good time.
- 7.2 The BMD prepares an acceptance report for the acceptance procedure which must be signed by both parties or their representatives. Any defects must be individually listed in the report.
- 7.3 Until acceptance with a load test is carried out by BMD, the system may not be used. BMD rejects any liability from such use.
- 7.4 The deliveries and services shall be deemed to be accepted by the buyer
  - a) even if the buyer does not participate in the acceptance process despite receiving a prior request for the same;
  - b) even if the acceptance test cannot be conducted on the planned date due to reasons for which BMD is not responsible;
  - c) even if the buyer refuses acceptance, without having the right to do so;
  - d) even if the buyer refuses to sign the acceptance report;
  - e) as soon as the buyer uses the deliveries or services of BMD according to this works contract.

## **8 Guarantees**

### **8.1 Guarantee period**

BMD gives a guarantee of 2 years for new systems and for the reconstruction work carried out by it.

The guarantee period starts with the installation at the buyer's site.



For replaced parts, a new guarantee period of 12 months starts from the date of replacement. If parts are repaired, a guarantee period of 6 months starts from the completion of repairs.

A guarantee of 6 months is given for wear parts.

If the installation to be done at the buyer's site is delayed due to reasons for which BMD is not responsible, then the guarantee period shall start on the date on which the installation would have been completed, had there been no delay.

For only delivered wear and spare parts, the guarantee period starts on the day of delivery.

## **8.2 The buyer's obligation to notify immediately**

The buyer is obligated to immediately notify any defects that occur during the guarantee period to BMD in writing, and to take the necessary measures to minimise the damage.

## **8.3 Lapse of guarantee**

Guarantees are not provided

- a) if the buyer or a third party make changes or carry out repairs on the deliveries and services;
- b) if the buyer does not notify the defects to BMD immediately in writing;
- c) if the buyer does not immediately take all the appropriate measures to minimise damage;
- d) if the buyer does not give BMD a chance to remedy the defects in time;
- e) in case of improper use and handling and excessive use of the deliveries and services, if operating rules are not followed, using inappropriate equipment, exposure to chemical or electrolytic effects, if construction and installation activities are done by third parties and not by BMD, in cases of force majeure, vandalism, and changes in use (e.g. change from a single-shift to a multi-shift operation, higher loads, etc.).

## **8.4 Scope of the guarantee**

The guarantee includes free replacement and free repair of defective materials.

BMD shall decide whether a repair or a replacement is suitable in each case.

The costs for the work done, the travel times, and the transports for exchanging the defective material with the buyer on the site shall be borne by the buyer.

There is no guarantee for the radio remote control.

## **9 Guarantee, liability for defects, malperformance, non-fulfilment of contract**

9.1 The liability of BMD is limited to providing the guarantees according to clause 8. All other rights of the buyer arising from defects, particularly the right to withdraw from the contract, reduction or replacement for any subsequent damages from defects (loss of production, downtime, loss of orders, lost profit, all other economic loss, etc.) are explicitly ruled out.

9.2 In cases of misperformance or non-performance due to unlawful intent or gross negligence by BMD, the buyer is obligated to give an appropriate extension to BMD to fulfil the contract for the relevant deliveries and services, along with a warning from the buyer to withdraw from the contract for the default. If this extension expires due to the fault of BMD without any remedial action being taken, then the buyer can withdraw from the contract with respect to the deliveries and services that were not provided according to the contract or the improper performance of which can be clearly foreseen, and the buyer can claim a refund of the payments already made for such deliveries and services. In such cases, for a compensation there is a limitation



of maximum 5% of the contract price of the deliveries and services, based on which the buyer is withdrawing from the contract.

## 10 Contract termination by BMD

If unforeseen events considerably change the economic relevance or the content of the deliveries and services, or if such events have a major impact on the work of BMD, and in case of subsequent impossibility of performance, the contract shall be amended accordingly. If contract amendments are not economically viable for BMD, then BMD has the right to terminate the contract or relevant parts of the contract. BMD must inform the buyer immediately regarding termination of contract. If the contract is terminated, BMD is entitled to receive payments for the deliveries and services that have already been provided. Compensation claims of the buyer based on such termination of contract are excluded.

## 11 Software

If the deliveries and services provided by BMD include software, then, if no other agreements are made, the buyer is given the non-exclusive right to use the software together with the delivery object. The buyer does not have the right to make copies (unless it is for archiving purposes, for troubleshooting, or for replacing defective data media) or to edit the software. In particular, the buyer may not disassemble, decompile, decode or reverse engineer the software without obtaining a prior written consent from BMD to do so. In case of infringements, BMD can revoke the right of use. If third-party software is used, the terms of use of the licensor shall be applicable, and this third party can make claims in addition to BMD in case of infringements.

## 12 Plans and technical documents

- 12.1 Brochures and catalogues are not binding without a separate written agreement. Data in technical documents shall only be binding if the buyer has been assured of this in writing.
- 12.2 Each contract party retains all rights to plans and technical documents that it hands over to the respective other party. The receiving contract party recognises these rights and it shall not provide these documents to a third party, whether partly or fully, without the prior written permission of the other contract party, and it may not use these documents for any other purposes than for which they were provided.

## 13 Applicable law and jurisdiction

This contract is governed solely by Swiss law, excluding the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods of 11th April 1980 (Vienna Convention).

The place of jurisdiction shall be the place of headquarters of BMD.