

General Terms of Sale of Büter Group*

Version: 16 June 2020

Article 1 General

- (1) *These Terms of Sale (hereinafter ‘**Terms of Sale**’) simultaneously apply for the group companies
 - Büter Hydraulics Beheer B.V.
 - Büter Maschinenfabrik GmbH
 - Büter Hydraulics B.V.
 - Büter Hebetchnik GmbH(jointly and individually ‘**Büter Group**’ or the ‘**Vendor**’).
- (2) These Terms of Sale apply exclusively to all deliveries, services and offers of the Büter Group concerning the sale of movable items, irrespective of whether Büter Group manufactures those items itself or purchases them from suppliers. The Terms of Sale form an integral part of all contracts that the Vendor concludes with its contractual partners (hereinafter ‘**Purchaser**’) for the deliveries or services it offers; the Vendor does not acknowledge conflicting terms or general terms and conditions of the Purchaser or third parties that deviate from these Terms of Sale, unless it has expressly consented to their applicability. The Vendor’s Terms of Sale also apply if it effects delivery to the Purchaser, without reservation, in the knowledge of conflicting terms or terms of the Vendor that deviate from its Terms of Sale.
- (3) These Terms of Sale only apply in respect of entrepreneurs, legal persons under public law or special funds under public law, pursuant to Section 310(1) German Civil Code (BGB).
- (4) These Terms of Sale also apply - in their latest, most recently notified version - to all future deliveries, services, or offers to the Purchaser, even if they are not the subject of a further separate agreement or Büter Group does not refer to them anew in each individual case.

Article 2 Offer – Contract conclusion – Scope of delivery

- (1) Our offer is without obligation and non-binding, unless it is explicitly marked as binding, contains a specific acceptance period, or the order confirmation states otherwise. The ordering of the goods by the Purchaser constitutes a binding offer to enter into a contract. The Vendor may accept orders or instructions within 14 days of receipt. The Vendor’s acceptance may be notified either in writing (e.g. in an order confirmation) or by delivering the goods to the Purchaser.
- (2) The legal relationship between the Vendor and Purchaser is governed exclusively by the written purchase contract, including these Terms of Sale. Said contract contains all the agreements between the contracting parties concerning the object of the contract. Verbal assurances by the Vendor prior to the conclusion of this contract are not legally binding and verbal agreements between the contracting parties are replaced by the written contract, unless those agreements explicitly provide that they remain binding.
- (3) In order to be valid, additions and amendments to the agreements reached, including these Terms of Sale and the waiver of this clause, must be in writing. With the exception of the directors or authorised signatories, employees of the Vendor are not entitled to make verbal agreements that differ from the written agreement. Transmission by telecommunication, in particular fax or e-mail, also satisfies the written form requirement, provided a copy of the signed declaration is sent.
- (4) The Vendor retains property rights and copyright to the illustrations, drawings, samples, models, plans, tools, resources, calculations, cost estimates, prospectuses, catalogues and other documents handed over by it. This also applies to written documents designated as ‘confidential’. The Purchaser must obtain the Vendor’s prior written permission before sharing them with third parties. At the Vendor’s request, the Purchaser must return these objects and documents to the Vendor in their entirety, and destroy any copies made, if it no longer requires them in the ordinary course of its business or if negotiations do not culminate in the conclusion of a contract. The storage of data made available in electronic form, for the usual data security purposes, is excluded from this requirement.

- (5) The Vendor and Purchaser will contractually agree the characteristics of the delivery item beforehand and will produce a design drawing showing the contractually agreed specifications. The Vendor is only under an obligation to fulfil the contractually agreed specifications indicated on the design drawing. It is not under any further obligation to ensure the suitability of the delivery item for the purposes intended by the Purchaser, unless expressly agreed otherwise in writing.

Article 3 Price – Payment

- (1) Prices are in euros and, unless specifically agreed otherwise, apply 'ex works' of the Vendor or, if dispatched from the manufacturer's factory, ex works, excluding packaging and loading and, in the case of export deliveries, exclusive of customs and fees and other public levies. Statutory VAT is not included in the price. This is calculated and charged to the Purchaser at the statutory rate. If delivery is to take place more than 4 months after the conclusion of the contract, and provided the agreed prices are based on the Vendor's list prices, the Vendor's list prices as applicable at the time of delivery shall apply (less, in each case, an agreed percentage or fixed discount). If delivery takes place more than 4 months after the conclusion of the contract, in the event of price increases by its sub-suppliers or unexpected rises in wage and transport costs, the Vendor shall be entitled to demand fresh price negotiations. The Vendor is only bound by the agreed price for the agreed delivery period, but for a minimum of 4 months.
- (2) In the absence of an explicit written agreement, the purchase price is payable immediately, without any deductions. This does not affect the Purchaser's rights of retention pursuant to Section 320 German Civil Code (BGB). Promised early payment discounts apply only if the Purchaser is not in arrears with payment for previous deliveries.
- (3) The Purchaser only has the right of set-off if its counterclaims have been established by law, are undisputed, or are recognised by the Vendor. Furthermore, it is only authorised to exercise a right of retention if its counterclaim is based on the same contractual relationship under which the delivery concerned was made.
- (4) Payments may only be made to employees of the Vendor if they present a valid authority to collect.
- (5) The Vendor is entitled to only undertake or render outstanding deliveries or services against payment in advance or on security if, after the conclusion of the contract, it becomes aware of circumstances that are likely to seriously reduce the Purchaser's creditworthiness and which jeopardise payment of outstanding claims of the Vendor by the Purchaser under the respective contractual relationship (including for individual orders under the same framework contract).

Article 4 Delivery lead time – Delivery delay – Default of acceptance

- (1) The delivery lead time (i.e. delivery term or delivery date) is only ever an approximation, unless a fixed term or firm deadline is explicitly mentioned in the agreements between the contracting parties. If the contracting parties work with a delivery schedule, the quantities mentioned on that schedule must be accepted by the Purchaser in the delivery lead times indicated. Adherence to the delivery lead time by the Vendor presupposes that all commercial and technical questions between the contracting parties have been clarified, in particular that Büter Group has a design drawing approved by the Purchaser's signature, and the Purchaser has fulfilled all of its obligations, such as the presentation of necessary official certificates or approvals, or has made a down payment. If this is not the case, the delivery lead time shall be extended accordingly. This does not apply if the Vendor is responsible for the delay.
- (2) Adherence to the delivery lead time is subject to correct and timely self-delivery. The Vendor gives the earliest possible notice of impending delays.
- (3) The delivery lead time is deemed to have been met if the delivery item has left the Vendor's factory by the time the period elapses or, if shipping has been agreed, readiness for dispatch has been notified following handover to the carrier, freight forwarder or other third parties tasked with transport. Except in the case of justified refusal to take delivery, if acceptance is required, the acceptance date is definitive or, alternatively, the notification of readiness for acceptance.

- (4) Normally, goods are only accepted at Büter Group Monday to Thursday between 8 a.m. and 3 p.m., and at other times or on Fridays by prior arrangement only.
- (5) Without prejudice to its rights arising from default by the Purchaser, the Vendor may demand from the Purchaser an extension of periods for delivery and services or the postponement of dates for delivery and services for as long as the Purchaser has not fulfilled its contractual obligations towards the Vendor. If the dispatch or acceptance of the delivery item is delayed for reasons for which the Purchaser is responsible, starting one month after notification of readiness for dispatch or acceptance the costs incurred as a result of the delay will be charged to the Purchaser.
- (6) If the Purchaser defaults on acceptance or culpably breaches other duties of cooperation, we are entitled to demand compensation for the damage we incur as a result, including any additional expenses (e.g. warehousing costs). In this case, the risk of accidental loss or of accidental degradation of the item purchased transfers to the Purchaser at the point at which the Purchaser falls into default of acceptance or defaults on debts.
- (7) The Vendor is not liable for impossibility of delivery or for delivery delays if these were caused by force majeure or other events that could not be foreseen at the time of conclusion of the contract (e.g. breakdowns of any kind in business operations, difficulties with the supply of materials or energy, delays with transport, strikes, legal lockouts, unrest, shortage of labour, energy or raw materials, difficulties procuring necessary official permits, official measures or non-delivery, incorrect or late delivery by suppliers) for which the Vendor is not responsible. If such events make it substantially harder, or impossible, for the Vendor to deliver or to render the service, and the hindrance is not of a merely temporary nature, the Vendor shall be entitled to withdraw from the contract. In the case of temporary obstacles, the delivery or service periods shall be extended, or the delivery or service date shall be postponed for the duration of the obstacle plus an appropriate lead time. If, as a result of the delay, the Purchaser cannot be expected to accept the delivery or service, it may withdraw from the contract by sending an immediate, written statement to the Vendor.
- (8) If the Vendor defaults on a delivery or service or if it becomes impossible for it to deliver or render a service, for any reason whatsoever, the Vendor's liability for compensation shall be limited in accordance with Section 8 of these Terms of Sale. In any event, however, a reminder from the Purchaser shall be required.

Article 5

Transfer of risk – Acceptance – Packaging – Place of performance

- (1) Delivery takes place 'ex works', which is also the place of performance for delivery and for any supplementary performance. The goods will be shipped to a different destination at the Purchaser's request and expense (sale by dispatch). The risk passes to the Purchaser at the time of handover; in the case of sale by dispatch, when the delivery item has been handed over to the transporter, carrier or freight forwarder, or has been loaded onto a vehicle of the Vendor (the start of the loading process being definitive in each case), but at the latest when the delivery item has left the factory, even if partial deliveries are being made or the Vendor has assumed other services, e.g. the shipping costs or delivery and installation. If an acceptance inspection must take place, transfer of risk shall take place at this time. Such inspection must be performed immediately on the acceptance date or, alternatively, following the Vendor's notification of readiness for acceptance. The Purchaser may not refuse acceptance if a non-essential defect is present.
- (2) If dispatch is delayed or cancelled due to circumstances for which the Purchaser is responsible, the risk shall pass to the Purchaser from the date of readiness for dispatch. However, the Vendor is obliged to arrange such insurance as the Purchaser demands, at the Purchaser's request and expense.
- (3) The Vendor is only entitled to make partial deliveries if the partial delivery can be used by the customer within the scope of the contractual intended use, the delivery of the remaining goods ordered is assured, and the Purchaser does not incur any substantial additional outlay or additional costs as a result (unless the Vendor declares that it is willing to pay such costs).
- (4) The shipping method (in particular shipping company and transport route) and the packaging are subject to the Vendor's due discretion. Packaging as defined in the packaging ordinance, with the exception of pallets, will not be taken back. The Purchaser is obliged to arrange disposal of packaging at its expense.

Article 6

Retention of title

- (1) The Vendor retains title to the delivery item until receipt of all our current and future payments under the purchase contract and the current business relationship (secured claims). Should the Purchaser act in breach of the contract, in particular if it defaults on payment, the Vendor shall be entitled to take back the delivery item. The taking back of the delivery item by the Vendor constitutes withdrawal from the contract. After taking back the delivery item, the Vendor is authorised to utilise it and the utilisation proceeds must be set off against the Purchaser's liabilities, less reasonable utilisation costs.
- (2) The Purchaser is obliged to handle the delivery item with care; in particular, it is obliged to arrange adequate insurance for its reinstatement value against fire, water damage and theft, at its own expense. If maintenance and inspection work is necessary, the Purchaser must perform this promptly and at its expense.
- (3) In the case of seizures or other actions by third parties, the Purchaser must notify the Vendor immediately in writing, so that the Vendor can file a suit without delay, in accordance with Section 771 German Code of Civil Procedure (ZPO). If the third party is unable to reimburse the Vendor for the judicial and extrajudicial costs of a lawsuit in accordance with Section 771 Code of Civil Procedure, the Purchaser shall be liable for the loss suffered by the Vendor.
- (4) The Purchaser is entitled to resell the delivery item in the ordinary course of its business; however, it hereby assigns to the Vendor all claims in the amount of the final invoice total (including VAT) of the claim that accrue to it from the resale to its customer or third parties, irrespective of whether the delivery item was resold without or after being processed, mixed or combined (further processing). The Purchaser remains authorised to collect this claim even after assigning it. The Vendor's authority to collect the claim itself is unaffected. However, the Vendor undertakes not to collect the claim provided the Purchaser fulfils its payment obligations from the proceeds collected, does not default on payment and, in particular, no petition for insolvency proceedings has been filed and there has been no cessation of payment. If this is the case, the Vendor may demand that the Purchaser informs it of the claims assigned to it and their debtors, provides all the information needed for collection, hands over the related documents, and informs the debtors (third parties) of the assignment.
- (5) The processing or remodelling of the delivery item by the Purchaser is always undertaken for the Vendor. If the delivery item is processed with other objects that do not belong to the Vendor, the Vendor shall acquire joint ownership of the new item at the ratio of the value of the delivery item (final invoice total including VAT) in relation to the other processed objects at the time of processing. The stipulations with regard to the delivery item delivered with reservation also apply to the item created as a result of processing.
- (6) If the delivery item is inseparably mixed with other objects that do not belong to the Vendor, the Vendor shall acquire joint ownership of the new item at the ratio of the value of the delivery item (final invoice total including VAT) in relation to the other mixed objects at the time of mixing. If the item is mixed in such a way that the Purchaser's item must be regarded as the main item, it shall be deemed to have been agreed that the Purchaser transfers proportionate joint ownership to the Vendor. The Purchaser safeguards the sole ownership or joint ownership thus created for the Vendor.
- (7) The Purchaser also assigns to the Vendor the claims to secure the Vendor's claims against the Purchaser that are created vis-a-vis a third party as a result of the delivery item being combined with land.
- (8) The Vendor undertakes to release the securities to which it is entitled at the Purchaser's request, at our discretion and to the extent that the realisable value of the Vendor's securities exceeds the claims to be secured by more than 10%.

Article 7

Claims for defects

To the exclusion of other claims and subject to the provisions of Section 8, the Vendor gives a guarantee in respect of material defects and defects of title affecting the delivery as follows:

Material defects:

- (1) All parts that turn out to be defective due to a circumstance prior to the transfer of risk must be repaired or replaced, at the Vendor's discretion, free of charge. The detection of such defects must be notified to the Vendor at once in writing. Replaced parts become the property of the Vendor. Our right to refuse subsequent performance in accordance with the statutory requirements remains unaffected.
- (2) The Purchaser may only make a claim for defects if it has fulfilled its statutory duties to inspect the goods and notify complaints (cf. Sections 377 and 381 German Commercial Code). Should a defect become apparent at the time of delivery or inspection or at any subsequent point in time, we must be informed at once, in writing. In any event, obvious defects must be reported in writing within 7 working days of delivery and defects that were not discernible at the time of inspection within the same period of their discovery. If the Purchaser fails to duly inspect the goods and/or complain about defects, our liability for any defects that are not reported, are reported late, or are not reported in the correct manner shall be excluded in accordance with the law.
- (3) After conferring with the Vendor, the Purchaser must allow the time and opportunity that the Vendor deems necessary for rectification and replacement deliveries; in particular, the Purchaser must hand over the goods that are the subject of the complaint for inspection. Failing this, the Vendor shall be discharged from liability for the ensuing consequences. Only in urgent cases that jeopardise operational security, or in order to ward off disproportionately severe losses, the Purchaser has the right (provided it informs the Vendor immediately) to remedy the defect itself or to cause it to be remedied by third parties, and to demand reimbursement by the Vendor of the necessary expenditure.
- (4) In the case of defects affecting components made by other manufacturers, the Vendor will, at its discretion, either assert its warranty claims against the manufacturers and sub-suppliers for the Purchaser's account, or assign them to the Purchaser. In the event of such defects, warranty claims against the Vendor shall only exist, subject to the other requirements and in accordance with these Terms of Sale, if the judicial enforcement of the aforementioned claims against the manufacturer and sub-supplier was unsuccessful or, due to a circumstance such as insolvency, is futile. The limitation period for the Purchaser's relevant warranty claims against the Vendor shall be suspended for the duration of a legal dispute with the manufacturer or sub-supplier.
- (5) Of the direct costs arising from rectification or replacement, if the complaint proves justified the Vendor shall bear the costs of the replacement part, including shipping. In addition, the Vendor bears the costs of removal and installation, as well as the costs of providing any necessary fitters and assistants, including travel costs, provided such costs are not augmented by the fact that the delivery item was brought to a location other than the place of performance.
- (6) In accordance with the law, the Purchaser has the right to withdraw from the contract if the Vendor – taking due account of the statutory exceptions – allows a reasonable grace period for rectification or replacement on account of a material defect to elapse fruitlessly. If the defect is only minor, the Purchaser only has the right to a reduction of the contractual price.
Other claims are based on Section 8(2) of these Terms of Sale.
- (7) No guarantee is given for the following cases in particular:
Inappropriate or inexpert use, incorrect installation or setting into operation by the Purchaser or third parties, normal wear, incorrect or negligent handling, incorrect maintenance, unsuitable operating equipment, damage caused by any chemical, electrochemical or electrical influences.
- (8) If the Purchaser or a third party carries out inexpert remedial work, the Vendor shall not be liable for the ensuing consequences. The same applies to modifications to the delivery item made without the Vendor's prior consent.
- (9) The delivery of used objects, which must be agreed with the Purchaser on an individual basis, is made to the exclusion of any warranty for material defects.

Defects of title:

- (10) If the use of the delivery item results in an infringement of industrial property rights or copyrights on the home market, in principle the Vendor will, at its expense, procure the right for the Purchaser to continue to use the item or will modify the delivery item in a manner that is reasonable for the Purchaser, such that the infringement no longer exists. If this is not feasible on commercially reasonable terms or within a reasonable period of time, the Purchaser shall be entitled to withdraw from the contract. Under the above conditions, the Vendor also has the right to withdraw from the contract.

Furthermore, the Vendor will indemnify the Purchaser against undisputed claims of the relevant owners of the property rights or claims of such owners that have been established by a court of law.

- (11) Subject to the provisions of Section 8(2) of these Terms of Sale, the Vendor's obligations as set out in Section 7(7) above are exhaustive in the event of an infringement of property rights and copyrights. They shall exist only if:
- the Purchaser immediately informs the Vendor of alleged property right or copyright infringements
 - the Purchaser supports the Vendor to a reasonable extent in mounting a defence against asserted claims, or enables the Vendor to perform the modification measures in accordance with Section 7(7) above
 - all defence measures, including out-of-court settlements, remain reserved for the Vendor
 - the defect of title is not due to an instruction given by the Purchaser, and
 - the infringement of rights was not caused by the Purchaser having independently modified or utilised the delivery item in a manner contrary to the contract.

Article 8

General limitation of liability

- (1) The Vendor's liability to pay compensation, on any legal grounds whatsoever, in particular, but not limited to, impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and action in tort, is limited in accordance with this Section 8, unless there is blame in each case.
- (2) The Vendor is not liable in the case of simple negligence of its organs, legal representatives, employees or other agents, unless a breach of essential contractual obligations is involved (obligation that must be fulfilled in order for the contract to be properly performed and which the contractual partners regularly rely upon, and are entitled to rely upon). Essential obligations are those to effect timely delivery and installation of the delivery item, its freedom from defects that significantly affect its functionality or usability, as well as obligations concerning consultancy services, protection and care designed to enable the Purchaser to use the delivery item in accordance with the contract or the purpose of which is to protect the lives and health of the Purchaser's personnel or to protect the Purchaser's property against significant damage.
- (3) If the Vendor is liable for damages on the grounds of Section 8(2), such liability shall be limited to damages that, at the time the contract was concluded, the Vendor foresaw as a potential consequence of a breach of contract or which it ought to have foreseen had it exercised due diligence. Indirect loss and consequential damage due to defects affecting the delivery item are only eligible for compensation if such damages are typically expected when the delivery item is used as intended.
- (4) In the case of liability for simple negligence, the Vendor's liability to pay damages for material damage and the resulting further financial losses is limited to the sum of EUR 2,000,000 per loss event (in line with the current cover provided under its product liability insurance or third-party liability insurance), even if a breach of an essential contractual obligation is involved.
- (5) If the Vendor provides technical information or consultancy and such information or advice is not part of the contractually agreed scope of services owed by it, this shall be done free of charge and to the exclusion of any liability.
- (6) The limitations of this Section 8 do not apply to the Vendor's liability for intentional or grossly negligent behaviour, for injury to life, limb or health, or under the Product Liability Act.

Article 9

Limitation period

The limitation period for claims for defects is 12 months, starting from the transfer of risk. This period does not apply to the Purchaser's entitlement to compensation for injury to life, limb or health or under the Product Liability Act, or for intentional or grossly negligent breaches of duty by the Vendor or its agents, all of which become time-barred in accordance with the statutory provisions.

Article 10 Duties of the Purchaser

- (1) The Purchaser must provide the Vendor with all necessary information, in writing, prior to conclusion of the contract.
- (2) The Purchaser must take responsibility for, and adhere to the intended use of the item, identify hazards, identify and assess the risk, remove hazards, prepare the operating instructions and technical documentation and issue the declaration of conformity.
- (3) The design drawing approved by the Purchaser's signature and the user manual for hydraulic cylinders (which can be downloaded at www.bueter.com/betriebsanleitung.pdf) and other delivery items form part of the contract. The Purchaser must follow and adhere to the instructions and procedures given in the user manual.

Delivery of machinery and equipment:

- (4) In the case of partly completed machinery pursuant to Article 2(g) of Machinery Directive 2006/42/EC which is incorporated into other machinery and/or cannot function independently, Büter Group will prepare documentation for such machinery in accordance with Article 13 of Machinery Directive 2006/42/EC. The operation of such machinery is forbidden until such time as it is established that the machinery into which it is incorporated fulfils, as a whole, the safety requirements of Machinery Directive 2006/42/EC. Furthermore, the Purchaser must independently check whether additional requirements under additional directives, standards and regulations must be applied to, and observed for the machinery in question.
- (5) In the case of machinery pursuant to Article 2(a) of Machinery Directive 2006/42/EC, Büter Group will issue a declaration of conformity for such machinery and equipment in accordance with Article 12 of Machinery Directive 2006/42/EC. This applies to machinery and equipment that are placed on the market for the first time by the manufacturer, i.e. Büter Group. Each time thereafter that machinery is placed on the market or put into operation, it may be necessary to reassess conformity with Machinery Directive 2006/42/EC or other applicable directives, standards and regulations of the party placing it on the market or putting it into operation, i.e. the Purchaser.

Article 11 Applicable law – Jurisdiction – Loopholes

- (1) All legal relationships between the Vendor and Purchaser are governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of international uniform law, in particular the UN Sales Convention (CISG).
- (2) If the Purchaser is a merchant pursuant to the German Commercial Code, a legal entity under public law or a special fund under public law, the sole place of jurisdiction, including in international matters, is Meppen (Germany). However, the Vendor is entitled to file a suit at the Purchaser's head office or branch office.
- (3) Should a provision of these Terms of Sale and additional agreements made be, or become wholly or partially ineffective, this shall not affect the validity of the remaining Terms of Sale. In such an event, the contracting parties undertake to replace the ineffective provision concerned with an effective provision that most closely reflects the economic purpose of the contract.
- (4) Should the contract or these Terms of Sale contain loopholes, they shall be filled with such legally effective provisions as the contractual partners would have agreed, in accordance with the economic objectives of the contract and the purpose of these Terms of Sale, had they been aware of the loopholes.

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