

General terms and conditions of sale and delivery

of

BUHLMANN AUSTRIA GMBH

Status: August 2019

1. Scope
2. Contractual language
3. Applicable law, place of jurisdiction¹ and place of performance²
4. Conclusion of the contract and quality of the goods
 - 4.1 Conclusion of the contract
 - 4.2 Quality of the goods
5. Delivery and passage of risk
 - 5.1 Delivery
 - 5.2 Passage of risk
6. Delivery and hindrances to delivery
7. Prices, shipping costs, due date and default
 - 7.1 Prices and shipping costs
 - 7.2 Due date and default
8. Rights and duties of the buyer in the case of defects
 - 8.1 Customer's complaints³ and warranty
 - 8.2 Acceptance
9. Manufacturer's guarantee
10. Informatory duty
11. Reservation of ownership
12. Liability
13. Periods of statutory limitation
14. Force majeure
15. Salvational clause

¹ *domicilium disputandi* ² *domicilium executandi* ³ notice of defects

1. Scope

The edition of these general terms and conditions of sale and delivery of **BUHLMANN AUSTRIA GMBH**, (briefly referred to as "BUHLMANN" hereinafter) with its registered office in Stadtplatz 12 – Top 6, 8680 Mürzzuschlag, which is valid at the point in time of placing the purchase order, applies to all of the contractual agreements about the purchase of goods or services from BUHLMANN that will be concluded **between BUHLMANN and commercial customers/Buyers (businessmen or business enterprises)**. The Buyer declares that he agrees with these general terms and conditions of business when he places a purchase order as well as by confirming an offer that BUHLMANN makes. These general terms and conditions of business apply to all future business transactions, even without a renewed express agreement.

Alterations and supplements of the general terms and conditions of sale and delivery as well as verbal agreements which differ from the content of these general terms and conditions of sale and delivery, will only be effective when BUHLMANN has acknowledged them in writing. BUHLMANN expressly contradicts any of the customer's general terms and conditions of business, or his general terms and conditions of purchase. General terms and conditions of business, or general terms and conditions of purchase, which the Buyer submits and which differ from these general terms and conditions of business, or general terms and conditions of purchase, are invalid unless their validity has been expressly consented to in writing. BUHLMANN has filed the terms and conditions of business in a printable form as a PDF data file on its web site at <https://buhlmann-group.com>.

2. Contractual language

The contractual language is German. All other information and transactions will be offered in the German language.

3. Applicable law, place of jurisdiction and place of performance

The general terms and conditions of sale and delivery, as well as the contracts that will be concluded which include these general terms and conditions of sale and delivery, are subject to the Austrian material law and subject to excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

The sole jurisdiction of the materially responsible court in Mürzzuschlag applies as agreed. The sole jurisdiction of the materially responsible court in Mürzzuschlag also applies as agreed in the case of international deliveries. BUHLMANN reserves the right to sue the Buyer at his general place of jurisdiction. In addition, BUHLMANN reserves the right of appeal to any other court that can be responsible or have jurisdiction on account of the applicable international standards. The place of performance for deliveries, work services or payments is the registered office of BUHLMANN.

4. Conclusion of the contract and quality of the goods

4.1 Conclusion of the contract

All of BUHLMANN's quotations are invitations to the Buyer to submit an offer. BUHLMANN's quotations are subject to change without notice and they are given without engagement. The Buyer's purchase order represents a binding offer by the Buyer to conclude a contract. The contract will only be concluded materially whenever BUHLMANN acknowledges the order in writing or the performance (work or service) is actually provided by BUHLMANN. BUHLMANN's quotation as well as its acknowledgement of the order are decisive for the contract's content. Subsequent alterations, supplements or collateral agreements - especially drawings, illustrations, technical data, dimensions, weights or other performance data - require written agreement in order for them to be valid.

4.2 Quality of the goods

Only those characteristics and features that are mentioned in the quotation or in the acknowledgement of order are part of the agreed quality of the goods, or of the performance (work or service), that BUHLMANN provides. Declarations about the quality and about the shelf life or service life of the goods, with which BUHLMANN grants additional rights to the Buyer irrespective of his legal claims in the case of the guarantee, must also be understood as a guarantee only if they are expressly described as such.

The quality and dimensions of the materials that BUHLMANN delivers are solely determined according to the international standards on materials. The common trade custom applies insofar no standards exist. Increased or decreased quantities are permissible according to the standard or the applicable mercantile custom. At least one commercial length $\pm 10\%$ applies in the case of tubes or pipes.

5. Delivery and passage of risk

5.1 Delivery

The deliveries will be made ex-works (EXW - Incoterms® 2010). Partial deliveries are permissible unless they are excluded expressly: this also applies accordingly to the increased or decreased quantities that are customary in the branch of business. The goods will be delivered unpacked and without any protection from rust, if nothing else has been agreed expressly. Any packaging will be provided in return for an extra charge that is a common trade practice and in the way that is a common trade practice. Such an agreement about the packaging must be made in writing. It is excluded for BUHLMANN to take back the packaging. The choice of shipping route and means of shipping are left to BUHLMANN in the absence of a particular agreement. If the goods will be shipped by utilizing auxiliary material (pallets, etc.) then the Buyer is obligated to redeliver the same number and quality of auxiliary material free of charge. If he does not fulfil this obligation within a period of one week, than he will owe BUHLMANN the amount which is required for purchasing the same number and quality of auxiliary material. It is possible for the Buyer to collect the goods himself from BUHLMANN's location in Mürzzuschlag after fixing a date.

5.2 Passage of risk

The risk of accidental destruction or accidental damage of the goods passes to the buyer as soon as BUHLMANN has handed over the goods to a carrier or freight-forwarder, or to another person or institution that is designated for carrying out the despatch or shipment but at the latest when the goods leave the works of BUHLMANN's warehouse. If the goods are ready for shipping and the despatch is delayed for reasons that are not attributable to BUHLMANN, then the risk will pass to the Buyer upon the notification of shipping. BUHLMANN is entitled in this case to despatch the goods according to its choice and at the Buyer's cost or to store them at its discretion and to charge [the Buyer] for them immediately.

6. Delivery and hindrance to delivery

BUHLMANN will make the delivery without unnecessary delay. The dates of delivery and performance (work or service) are non-binding and they only apply as guides insofar as these dates will not be expressly declared as binding in writing. The dates of delivery describe the departure from the works, or the day when the buyer receives the goods in the case of deliveries that are made free of charge to his address. In the case that BUHLMANN is responsible for delaying the delivery or performance (work or service), BUHLMANN will not be in default before a set, legally reasonable grace period for its obligation to deliver or perform has expired. If BUHLMANN is responsible for delaying the delivery, then BUHLMANN is solely liable according to the legal regulations. The Buyer must reimburse BUHLMANN for extra costs that might be necessary and which are caused by the delay, whenever the circumstances that are causing the delay lie within the Buyer's sphere of influence.

Insofar as BUHLMANN has made a hedging transaction with its upstream supplier(s), the dates of delivery that BUHLMANN states are subject to the reservation of timely and proper self-supply. An unreserved acceptance of the delayed deliveries or performance (work or service) by the Buyer applies as the Buyer's waiver of his contractual or legal claims, even if he complains about the delay immediately after the delivery; this also applies if BUHLMANN is already delayed with the delivery.

7. Prices, shipping costs, due date and default

7.1 Prices and shipping costs

Insofar as nothing else is agreed, the quoted prices are considered to be for the unpacked goods ex-works as well as for the net prices excluding the turnover tax or value-added tax. The buyer must pay separately for the incidental expenses of despatch or shipment (e.g., taxes, customs duties, freight charges, fees, other fiscal charges, insurance premiums, etc.) as well as the materials that are required for the despatch. The costs of packing, transport, loading and despatch will be charged according to cost. If the shipping is overseas, then the prices apply as F.O.B. delivery from the shipping port (Incoterms® 2010). If no price is agreed, then the prices that are quoted on BUHLMANN's respectively valid price-list apply. The prices apply as free delivery to the place of use via paved roads but without unloading in the case of deliveries from the warehouse that are agreed to be made free of freight charges.

Insofar as it is a common trade practice for the weight to be established by the weighing foreman in the works in the case of goods that are calculated according to weight, this [weighing method] applies. The proof of weight applies as having been provided when the weighing note is submitted, subject to excluding other evidence. In the case of bundles, the goods including the holding materials will be weighed gross for net.

7.2 Due date and default

The invoices from BUHLMANN are immediately due for payment into the bank account that BUHLMANN names, without any deduction. The payment's timeliness depends on the date when the credit note reaches the bank account that BUHLMANN has stated. If the Buyer falls into arrears with a payment arising from the contract, then BUHLMANN is entitled to set 14 days as the period of grace and to withdraw from the contract after this time limit has expired, or to sell the goods on the open market, or to auction them and to demand compensatory damages due to non-fulfilment. This procedure also applies if the Buyer is only in arrears regarding a partial payment. The Buyer is obligated in the case of delayed or defaulted payment (later than 10 days after receiving the invoice) to pay interest to BUHLMANN amounting to 9 percentage points above the basic rate of interest of the Austrian National Bank. Furthermore, a lump sum of € 40.00 will be charged as compensation or reimbursement of the operating costs in the case of delayed or defaulted payment. Further (legal) claims remain unaffected.

The Buyer's payments will always be set off against the oldest debt: namely, initially against the costs including any costs of intervention and then against the interest. Bills of exchange and cheques will only be accepted for the sake of fulfilment in every case. BUHLMANN does not have any obligation to accept bills of exchange or checks.

If taxes, customs duties, freight charges, fees or other fiscal charges of any kind - which influence the price of the goods - are increased or newly introduced after concluding the contract, or if other costs arise or are increased without BUHLMANN influencing them, then the parties must negotiate about appropriately increasing the purchase price in response to BUHLMANN's demand. If an agreement is not reached within 30 days after notifying the demand, then BUHLMANN will be entitled to withdraw from the contract.

The Buyer is only permitted to have a right to retain payments or to set them off against his counter-claims if and insofar as the matter concerns due counter-claims that are undisputed or legally established as binding. BUHLMANN is entitled to set off its debt claims against those of the Buyer and against those of business enterprises with which the Buyer is affiliated according to company law, irrespective of whatever legal reason – against settling the interest if necessary – even if the debt claims are due for payment differentially. This entitlement only refers to the balance on account, should the occasion arise. BUHLMANN's consent is required for assigning claims against it.

8. Rights and duties of the Buyer in the case of defects

8.1 Complaints and warranty

The Buyer has to check the goods or the performance (work or service) for completeness and conformity with the purchase order immediately after accepting or receiving them. Defects must be claimed in writing with a detailed description of the defect immediately after accepting or receiving the goods, or within 8 days after accepting or receiving the goods in the case of properly investigating the detectable defects, or immediately or within a time limit of three days at the most in the case of other defects as soon as they are detectable during the proper course of business. If he refrains from making the complaint, then the acceptance will apply as having taken place and an appeal about the defect is excluded.

The Buyer is obligated immediately to provide samples of the criticized material to BUHLMANN on demand. BUHLMANN must be given the opportunity of checking the complaint before the criticized goods are reprocessed or resold. In the case of defects that have been sold as declassified material, no warranty rights are vested in the Buyer regarding the stated reasons for declassification and those defects which he should usually expect. BUHLMANN's liability because of material defects is excluded in the case of purchasing [Class] IIa goods.

The rights according to the legal regulations are vested in the Buyer in the case of defects, provided that the customer's complaints [i.e., notices of defects] are justified and timely but with the following stipulations.

- a. If the goods are defective, then the Buyer's claims about the defects are initially restricted to a right of supplementary performance. This rule does not apply if the subsequent performance is unreasonable for the Buyer. The right to choose between the subsequent performance or a redelivery is vested in BUHLMANN. If the improvement fails twice or if BUHLMANN refuses to do it, then the Buyer can reduce the purchase price or demand cancellation of the contract (cancellation of the sale).
- b. The right to cancel the sale will not be vested in the Buyer if the defect is negligible.
- c. Clause VII applies to consequential damage resulting from defects.
- d. BUHLMANN will only accept expenses in connection with the subsequent performance insofar as they are reasonable in an individual case and especially in relation to the purchase price of the goods. BUHLMANN does not accept any expenses that arise because the goods have been brought to a place of performance that is other than that which was agreed, unless this place would correspond to its contractual usage or practice.
- e. If only individual goods are defective from several sold goods, or if only individual parts of sold goods are defective, then any right of withdrawal that the Buyer has is restricted to the defective goods or to the defective part. This rule does not apply if the defective goods or the defective part of the customary goods or parts cannot be separated without causing damage or functional losses, or if this would be unreasonable for the Buyer. The Buyer must explain the reasons for the unreasonableness.

8.2 Acceptance

If an acceptance is agreed, then it can only take place in BUHLMANN's warehouse or in the delivering works; it must be implemented immediately after notifying the readiness to despatch the goods. All of the costs that are incurred with the acceptance or which a third party charges to BUHLMANN will then be charged to the Buyer. If particular qualitative regulations are stipulated, then the Buyer is obligated to an acceptance in response to BUHLMANN's demand. If the acceptance does not take place, or it is untimely or incomplete, then BUHLMANN will be entitled to despatch the goods without acceptance or to store them at the Buyer's cost and risk. The goods apply as delivered according to the contract when they are shipped or stored. After the Buyer has implemented an agreed acceptance of the goods, then the complaint about material defects that were found during the agreed kind of acceptance is excluded. If the Buyer remains unaware of a defect due to negligence, then he can only assert rights because of this defect if BUHLMANN has fraudulently concealed the defect or if a guarantee has been undertaken.

9. Manufacturer's guarantee

Insofar as a manufacturer has given a voluntary consent that the goods will function for a specific

period (manufacturer's guarantee), the manufacturer's guarantee applies in this respect. The conditions and restrictions of the respective manufacturer's guarantee must be inferred from the respective guarantee's provisions.

10. Informational duty

The Buyer must truthfully notify BUHLMANN about all of the information and facts that are necessary for providing the performance (work or service). Altered circumstances, especially alterations of the Buyer's data (name, address and e-mail) must be notified to BUHLMANN immediately.

11. Reservation of ownership

The goods remain in the sole ownership of BUHLMANN until payment of all the debt claims arising from the contract including interest, payment of discounts that the Buyer has unjustifiably retained and payment of all claims on the current account's balance or deductions that BUHLMANN does not recognize, as well as the incurred costs and similar expenses, irrespective of whatever legal reason. The customer undertakes to handle the goods carefully and to comply with the orderly duty of care for as long as there is a reservation of ownership and not all of the debt claims have been settled completely.

The processing or transformation of BUHLMANN's goods by the Buyer always takes place for BUHLMANN as the manufacturer. If the goods will be processed, transformed, inseparably mixed or connected with other goods that do not belong to BUHLMANN, then BUHLMANN will acquire the co-ownership of the new goods in relation to the value of BUHLMANN's goods according to the value of the other processed goods at the time of processing, transformation, mixing or connection. If the other article should be considered to be the main article, then it is agreed herewith that the Buyer assigns proportional co-ownership to BUHLMANN. The Buyer will protect BUHLMANN's (co-) ownership non-remuneratively. Otherwise, the same rule that applies to the goods which BUHLMANN delivered subject to reservation also applies to the product which is created by the processing.

The Buyer is entitled to process and sell the conditional commodity during the ordinary course of business, provided that he is not in arrears with his payment obligations vis-à-vis BUHLMANN. The resale is equivalent to installation [of the conditional commodity] in the ground or in installations that are connected with buildings, or utilizing [the conditional commodity] for fulfilling other contracts for work or contracts for work and materials by the Buyer. The entitlement to process and sell [the conditional commodity] is also inapplicable if the Buyer's assets become substantially worsened. Pledging or assignment as security are impermissible. The Buyer assigns to BUHLMANN herewith for the sake of security all debt claims arising from reselling the goods (including all claims on the current account's balance), insurance claims as well as claims against third parties due to damage,

destruction, theft or loss of the goods. BUHLMANN accepts this assignment. If BUHLMANN is only vested with the co-ownership of the conditional commodity, then the advance assignment is restricted to the part of the debt claim that corresponds to BUHLMANN's share of the co-ownership (on the basis of the invoiced value). In the case of reselling the goods, the buyer has to retain the ownership of the conditional commodity vis-à-vis his own customers until the purchase price has been fully paid. The buyer will then not be entitled to resell the goods to third parties, if the debt claim on the purchase price arising from the resale is subject to a prohibition of assignment.

BUHLMANN empowers the Buyer irrevocably to collect the assigned debt claims on his own account and in his own name. This empowerment of collection can be revoked if the buyer does not properly comply with his payment obligations vis-à-vis BUHLMANN or if BUHLMANN's debt claims appear to be jeopardized by the Buyer's deficient ability to pay. BUHLMANN's debt claim will be due for payment immediately when the credit note of the sale's proceeds reaches the Buyer and it is payable by means of an immediate bank transfer without deduction. The Buyer has to inform BUHLMANN on demand about the debtors of the assigned debt claims. It is impermissible to assign the debt claim arising from the resale unless the matter concerns an assignment by way of genuine factoring, which will be notified to BUHLMANN and for which the factoring proceeds correspond to at least the value of BUHLMANN's secured debt claim. The Buyer is obligated to disclose the assignment vis-à-vis the factor and to advise him about BUHLMANN's ownership. The credit note from the factoring proceeds has to be the amount of BUHLMANN's secured debt claim and it must be paid into one of BUHLMANN's bank accounts. The buyer assigns to BUHLMANN herewith his attained debt claim to payment for assignment vis-à-vis the factor, amounting to the secured debt claim. BUHLMANN accepts the assignment.

The Buyer's right to possess the conditional commodity will lapse if his obligations arising from this contract or another contract are not fulfilled. BUHLMANN will then be entitled without setting a grace period or declaring a withdrawal to enter the Buyer's company premises and to take possession of the conditional commodity himself and to utilize it to the best possible extent through sale in the open market or by way of an auctions, irrespective of the seller's payment obligations and other obligations vis-à-vis BUHLMANN. The proceeds of utilization will be credited to the Buyer's liabilities after deducting the costs. Any surplus will be paid out to him.

In the case of third-party encroachments on the conditional commodity, the third party must be advised about BUHLMANN's ownership and BUHLMANN must be notified immediately. The Buyer will pay BUHLMANN's costs of intervention, as well as assign to BUHLMANN any claim to reimbursement of costs against the third party step by step, in return for paying the cost of intervention.

The Buyer is obligated at his own cost to insure the conditional commodity adequately at the real

value of the goods against the usual risks like theft, fire and damage by water for example and to store them in a way that will not jeopardize BUHLMANN's ownership. The Buyer assigns herewith his claims against the insurance company to BUHLMANN in advance in the case of an insured event. BUHLMANN accepts this assignment. If the buyer does not arrange the insurance according to this provision, then he is obligated to pay a contractual penalty amounting to € 10,000.

The Buyer is entitled to demand that BUHLMANN releases the debt claims insofar as the value of BUHLMANN's securities exceeds the debt claims that BUHLMANN secures by more than 10 %. BUHLMANN chooses any debt claims that have to be released.

If the law of the country in which the goods will be delivered or in which the goods are located does not allow a reservation of ownership according to the aforementioned regulations but this law permits the Seller to reserve similar real property rights to the delivered item for securing his debt claims, then such laws as apply as granting BUHLMANN the right to reserve the goods when the contract is concluded and they apply as being granted to BUHLMANN by the Buyer. The Buyer is obligated to cooperate with all of the measures that BUHLMANN wants to take for protecting its right of ownership or another substituting right to the conditional commodity. In the case of exports, BUHLMANN can also demand that the buyer pledges bank sureties for securing all of the debt claims that arise from the contract.

12. Liability

BUHLMANN is not liable for a specific success and it is only liable for grossly culpable infringements of duties in any case. BUHLMANN is liable at the most up to the common value of the goods which the customer orders. A liability for slight negligence will be excluded in the case of material damages. In addition, BUHLMANN is only liable for typical and foreseeable damages, i.e., for those which had to be expected in a reasonable way at the onset when the contract was concluded, according to the circumstances that were known at that point in time. Claims arising from consequential damages (resulting from defects) as well as damages for which the Buyer can maintain insurance cover or which the Buyer can control, or arising from other indirect damages and losses or lost profit, as well as general pecuniary detriment or financial losses especially those arising from deficient, omitted or belated provision of performance (work or service), are excluded expressly. The claims for compensatory damages that are vested in the Buyer according to the aforementioned provisions will be time-barred within one year after awareness of damage and injuring party or tortfeasor; the compensatory damages are orientated to the Product Liability Law according to the legal regulations about statutory limitation. A liability in the case of regress or recourse for the purposes of Article 12 of the Product Liability Law is excluded unless the party who is entitled to have regress or recourse proves that the fault was caused within BUHLMANN's sphere of influence and that it was grossly negligently culpable at least.

Insofar as BUHLMANN's liability is excluded or limited, this also applies to the personal liability of BUHLMANN's office staff, workers and other employees, legal representatives and sub-contractors or agents. The legal regulations about the burden of proof remain unaffected hereof.

13. Periods of statutory limitation

The Buyer's claims due to a defect in the goods as well as the Buyer's other contractual claims due to infringements of duty will be time-barred after one year has expired. Claims arising from a guarantee will also be time-barred after one year has expired.

Diverging from that, the statutory periods of limitation apply the Buyer's following claims.

- a. Claims for compensatory damages arising from a duty of product liability, or due to damage arising from injuring the life, limb or health, or from an essential contractual duty, as well as due to other damages that are based on a deliberate or grossly negligent infringement of duty by BUHLMANN or by BUHLMANN's subcontractors or agents.
- b. Claims to reimbursement of expenses as well as claims due to fraudulent concealment of a defect.

14. Force majeure

Cases of force majeure (unforeseeable circumstances and events for which BUHLMANN is not to blame, which could not have been prevented or avoided with the due care and diligence of a prudent businessman, e.g., industrial disputes or strikes, war, fire, hindered transport, shortage of raw materials or official measures) interrupt BUHLMANN's obligation of delivery for the period of their duration and the extent of their effect. Interruptions of operations and transport, improper provision of performance (work or service) by subcontractors, interrupted transport, etc., also apply as force majeure in particular. BUHLMANN is entitled to withdraw from the contract in these cases, if BUHLMANN informs the buyer immediately about this event and he reimburses the buyer for any *quid pro quo* or consideration that has been given (e.g., an advance payment or deposit). BUHLMANN therefore undertakes to give express information and reimbursement of the *quid-pro quo* or consideration vis-à-vis the customer in this case.

15. Salvational clause

The nullity of one of these general terms and conditions of sale and delivery's provisions leaves all of the remaining provisions upheld. The invalid provision must be replaced by an economically equivalent provision or by a similar but permissible provision.