



Badger Meter Europa

# Conditions of Sale for Badger Meter Europa GmbH

## 1. Offer, governing provisions and cancellation

These general conditions of sale are valid for all - even future - contracts and other performances of Badger Meter Europa GmbH ("Seller"). The general conditions of sale are also valid for all future businesses, even if they are not expressed in particular again.

Conditions of the purchaser against or differing from our conditions are only valid if Seller agrees to their use in a written form.

Offers from Badger Meter Europa GmbH automatically lose their validity 60 days after date of the quote except if the goods are delivered afterwards by the Seller and accepted by the purchaser.

Matters associated with the form of the sales contract and the inclusion of the existing conditions of sales and conditions in the relevant contract as well as all matters that are not controlled in the so completed conditions of sale and conditions are subject to the law of the Federal Republic of Germany and have to be decided according to this law. The use of the agreement of the United Nations about international bills of sales of goods (CSIG) dated 01.01.1991 is expressly excluded from our conditions of sale.

Orders can be cancelled or revised by the purchaser only after written agreement by the Seller. A storage and handling fee shall apply to all returned goods. Authorized returns to the Seller have to be delivered Ex-Works (EXW) Neuffen, Germany.

## 2. Delivery, delay and title

Any information on delivery date and/or delivery time can only be approximate. Seller shall not be liable for failure to meet projected delivery dates unless purchaser shall have notified Seller at the time of placing the order or accepting Seller's quotation that time is decisive and Seller shall have expressly accepted purchaser's delivery schedule in writing. The delivery time begins when Seller has acknowledged receipt of the complete specifications and/or applicable documents required to effect the shipment, such as but not limited to import license, foreign currency authorization, shipping instructions. Risk of loss or damage in transit shall pass to purchaser at the point where Seller has fulfilled its obligations under the shipping term specified in this contract according to the latest INCOTERMS description, published by the International Chamber of Commerce.

Notwithstanding the foregoing paragraph nor the INCOTERMS regulations, the goods remain Seller's property until full payment of the purchasing price and of any other amount due by the purchaser. This is also valid for connection or process of the subjected goods with other items.

As far as legal right of goods ownership passes to this contract during the delivery and before all purchasers' obligations have been fulfilled, the goods remain Seller's property until complete payment of the purchasing price. Furthermore, the purchaser grants a security claim to the Seller for all goods to be delivered - the removal of which confirms its acceptance - as security for the payment of the purchasing price as well as for any other due amounts and for all purchaser's obligations stated in this contract. For this, the purchaser has to collect all necessary documents in writing for the Seller as evidence for this security claim.

Seller may reclaim any goods delivered to purchaser or still in transit if purchaser shall fail to make payment in due time.

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Badger Meter Europa GmbH - Nürtinger Strasse 76 - 72639 Neuffen (Germany)  
Tel. +49-7025-9208-0 Fax +49-7025-9208-15 www.badgermeter.de E-mail:badger@badgermeter.de

Seller reserves the right to make partial deliveries, unless otherwise expressly stipulated in the contract. All partial deliveries have to be paid when invoice is due regardless of subsequent deliveries. Delay in delivery or nonconformity in any partial delivery shall not release the purchaser from its obligations to accept and pay for the remaining deliveries.

Seller shall not be liable for any damage resulting from a delay which cause is beyond Seller's control. This includes force majeure resulting from but is not limited to an act of purchaser, embargo or other governmental interventions, regulation of request, fire, accident, strike, war, riot, delay in transportation, delayed delivery from suppliers, and inability to obtain necessary labor and raw materials. In the event of such a delay, the date of delivery shall be extended for a period equal to the time loss by reason of the delay. If shipping or progress of the shipment is delayed or interrupted by the purchaser directly or indirectly, the purchaser shall pay Seller for all additional charges therefrom.

### **3. Descriptive literature and surrogates**

Catalogues, product brochures, photographs and other illustrations and descriptions are a general representation of the products offered, but shall not be taken as precise and shall not be part of this contract as long as not expressly regulated otherwise.

Seller reserves the right to make changes in design, technical specifications and materials at its sole discretion.

### **4. Storage**

If the products can not be shipped within fifteen (15) days after notification to the purchaser that the goods are ready for shipment, for any reason beyond Seller's control, Seller may store such products at the purchaser's risk in warehouse or yard upon Seller's premises. The purchaser shall pay for handling, transportation and storage charges at the prevailing commercial rates upon submission of invoices therefore.

### **5. Price and payment**

Our prices are EXW Neuffen, Germany excluding packaging and VAT, unless otherwise expressly agreed upon. The minimum value per order is 50 EUR.

Unless expressly defined otherwise by Seller, all payments must be made net in Euro within 30 days from date of dispatch in case of EXW Neuffen, Germany shipments, or from date of purchaser's receipt of documents in case of CIF shipments. Reevaluations or devaluations of the Euro against other currencies shall not affect the prices quoted or acknowledged. If, during the period of performance of an order, the financial condition of purchaser does no longer justifies the terms of payment specified, Seller may demand that purchaser makes full or partial payment in advance before proceeding with the shipment, or that purchaser accepts bills of exchange, letters of credit, bank guarantees, or provide any other satisfactory security or guaranty for the invoice to be promptly paid when due. The Seller can at its opinion and without prejudice to other lawful remedies, defer delivery or withdraw from the contract.

If delivery is deferred, the goods may be stored as provided in Section 4 and Seller may submit a new estimate and cost for completion based upon prevailing conditions. If purchaser defaults in any payment when due, then the whole contract price shall immediately become due and payable upon demand, or Seller, at its opinion without prejudice to its other lawful remedies, may defer or withdraw from the contract.

If agreed term of payment is exceeded, the Seller has the right to invoice interest rates to the extent of the prevailing bank rates, with however a minimum of 8 percent points above the basic interest rate. The Seller reserves the right to claim damages for the enforcement of a further delay.

In case of a lack of capability of the purchaser, the Seller is furthermore entitled to make all claims not subject to a statute of limitations from the current financial year payable and to withdraw a possibly granted direct debit instruction. In case of delayed payment, the Seller is furthermore entitled to demand back the goods after an appropriate extension of the deadline as well as to prohibit the further alienation or further processing of the goods delivered.

The purchaser can avoid the legal consequences with payment or security amounts to the extent of the claim. The regulations of the insolvency rules remain applicable.

## **6. Insurance**

Until full payment of the purchase price, the purchaser shall maintain insurance covering all goods shipped to him in such an amount and against such risks as insured by other companies in their branch or similar business branch and shall furnish evidence of such insurance satisfactory to Seller.

## **7. Taxes and other charges**

All incurred taxes, charges and costs of any kind imposed by governmental authorities shall be paid by the purchaser in addition to the prices quoted or invoiced. In the event the Seller is required to pay for such a tax, fee or charge, the purchaser shall reimburse Seller thereof.

## **8. Shipment**

All prices are valid EXW Neuffen, Germany. All charges in relation with the sale, purchase, delivery, storage, processing, use, consumption or transportation of the goods shall be the purchaser's responsibility. In case the contract specifies a CIF port of destination shipping term, Seller's obligation with respect to goods damaged in transit will be limited as defined in sections 10 and 13 herein.

## **9. Packing and documents**

Total prices include export packaging which amount can vary depending on whether shipment is made by air, ship or rail. Purchaser shall bear any additional expenses required to satisfy purchaser's specifications. Packages will be marked in accordance with purchaser's instructions. Seller shall furnish complete packing lists and such other information as may be necessary to enable purchaser's agent to prepare documents required for export shipment. Purchaser shall supply Seller with all necessary information and assistance for the most expeditious clearance of each shipment. No shipping containers may be returned to Seller unless such return is accepted in advance by Seller in writing and unless all return freight is prepaid by purchaser.

## **10. Liability for defects**

The purchaser has to check the goods after goods entry with the common and appropriate care. Seller complaints have to be communicated within 10 days after discovering of the fault in written form. The Seller is in such a case entitled to demand the return of the claimed good on the basis of CFR manufacturing plant. If the complaint is justified and immediate, the Seller can remove the defect or supply a product free of defaults (fulfilment) at Seller's sole discretion.

Should fulfilment fail or be denied, the purchaser can reduce the purchase price or, after having set an appropriate deadline which turned out to be unsuccessful, withdraw from the contract. If the defect is not considerable, the purchaser then only has the right to reduce the purchase price.

Expenditures in connection with the fulfilment are taken over by the Seller only if their relation to the purchase price of the goods are appropriate. Expenditures occurred by shipment of the goods to another place of the purchaser's company seat or subsidiary, are not taken over by the Seller unless this was stipulated in the contract.

The purchaser can not refer to a fault of the goods if he does not give the Seller the opportunity to convince himself of the fault, especially if the does not send back the claimed goods or samples.

For trade products, the Seller is only liable for of its own liability claims towards its suppliers.

The foregoing liabilities are exclusive and in lieu of all other express and implied liabilities whatsoever, including but not limited to (implied) liabilities of merchantability. Unless expressly provided otherwise by Seller, Seller neither represents nor warrants that the goods possess the qualities necessary for their ordinary or commercial use or for particular purposes expressly or impliedly contemplated by the sales contract. This exclusive remedy shall not be deemed to have failed its essential purpose as long as the Seller is willing and able to replace defective products or issue a credit note to purchaser within a reasonable time after purchaser proves to Seller that a defect is involved.

Further claims are excluded according to the following Section 11 of this general conditions of sale. This is particularly valid for the claims for replacement of damages that did not result from the goods themselves (default consequences damages).

## **11. General limitation of liability and limitation period**

In case of breach of contract, like impossibility, delay, fault of contractual initiation and not allowed action, Seller is liable – also for our executive employees and other accomplices – only in cases of intention and gross negligence, limited to the expectable contract typical damage at the finalization of the contract.

These limitations are not valid for culpable violation against essential contractual duties as far as the purpose achievement of the contract is threatened, or in cases of urgent liability according to the product liability law, at injury of life, body or health and not even then if Seller did not disclose known the faults or guaranteed for their absence. The regulations on the burden of proof remain untouched.

As far as not agreed otherwise, contractual claims elapse one year after the delivery of the goods. Our liability from intentional and gross negligent breaches of duty as well as the limitation of legal reverting claims remain untouched herefrom. In the cases of fulfilment, the limitation period does not start again.

## **12. Patents, trademarks, and copyrights**

Seller will, at its own expenses, defend or settle any suits that may be instituted by anyone against purchaser, for alleged infringement of any patent, trademark or copyright relating to any product manufactured and furnished by Seller hereunder issued in the country to which such goods are first delivered by Seller, if such alleged infringement consists of the use of such products, or parts thereof, in purchaser's business and provided that purchaser shall have made all payments then due hereunder, shall have given Seller immediate notice in writing of any such suit, transmitted to Seller immediately upon receipt all processes and papers served upon purchaser and permitted Seller through its counsel, either in the name of purchaser or in the name of Seller, to defend the same and given all needed information, assistance and authority to enable Seller to do so. If such products are in such suit held in and of themselves to infringe any valid patent, trademark or copyright in such country, then: (a) Seller will pay any final award of damages in such suit attributable to such infringement, and (b) if in such suit use of such products by purchaser is permanently enjoined by reason of such infringement, Seller shall, at its own expense and at its sole option, either (i) procure the right to continue using the products, (ii) modify the products to render them noninfringing, (ii) replace the products with noninfringing goods, or (iv) refund the purchase price and the transportation costs paid by purchaser for the products.

Notwithstanding the foregoing, Seller shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the user of the products in combination with other goods or materials not furnished by Seller. The foregoing states the entire liability of Seller for infringement, and in no event shall Seller be liable for consequential damages attributable to an infringement.

As to any products furnished by Seller to purchaser manufactured in accordance with drawings, designs or specifications proposed or furnished by purchaser or any claim of contributory infringement resulting from the user or resale by purchaser of products sold hereunder, Seller shall not be liable, and purchaser shall indemnify Seller and hold Seller harmless from and against any and all loss, liability, damage, claim or expense (including but not limited to Seller's reasonable attorneys' fees and other costs of defense) incurred by Seller as a result of any claim of patent, trademark, copyright or trade secret infringements, or infringements of any other proprietary rights of third parties. The purchase of any products hereunder does not entitle purchaser to employ the same in any patented process.

### **13. Nuclear disclaimer**

Equipment sold hereunder is not intended for use in connection with any nuclear facility or activity unless such usage is detailed on the face of this offer. If equipment is used in a nuclear facility or activity in the absence of such explicit reference herein, Seller disclaims all liability for any damage, injury or contamination, and the purchaser shall indemnify and hold Seller, its officers, agents, employees, successors, assigns and customers, whether direct or indirect, harmless from and against any and all losses, damages or expenses of whatever form or nature (including attorneys' fees and other costs of defending any action) which they, or any of them, may sustain or incur, whether as a result of breach of contract, warranty, tort (including but not limited to negligence), strict liability or other theories of law, by reason of such user.

### **14. Taking back of electronical devices**

WEEE-Reg.-Nr. DE 59037963.

Badger Meter Europa GmbH is willing to take back electronical devices as per defined in the ElektroG directive. The costs for disposal will be invoiced 1:1 to the customer.

### **14. Technical information**

Any sketches, models, samples or designs submitted by Seller shall remain the property of Seller and shall be treated as confidential information unless the Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models and samples, or any design or production process or techniques revealed thereby, shall be made without the express written consent of the Seller.

### **15. Purchaser's property**

Any property of the purchaser placed in Seller's custody for performance of this contract is not covered by insurance; and no risk is assumed by Seller in the event of loss or damage to such property by but not limited to fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of the Seller.

### **16. Arbitration**

Actions by Seller for nonpayment by purchaser of the undisputed purchase price of goods sold by Seller, or for redress for other undisputed breaches by purchaser of the contract of sale, may be brought by Seller before any judicial court of

competent jurisdiction without need for prior arbitration. All disputes between purchaser and Seller in connection with this contact shall be finally settled by arbitration in London, England, under the Rules of the London Court of Arbitration ("LCA Rules", which Rules with respect to matters not regulated by them shall incorporate the UNCITRAL arbitration rules) by one or more arbitrators appointed in accordance with said Rules applying these Terms and Conditions of Sale and the ECE General Conditions incorporated herein, consistent provisions of the 1980 Convention, and consistent provisions of the internal laws of the Federal Republic of Germany.

## **17. Separability**

If any provisions of these Terms and Conditions of Sale supplemented as provided herein shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provisions hereof which shall be construed as if such illegal and unenforceable provisions or provisions had not been inserted herein, unless such illegality or unenforceability shall destroy the underlying business purpose of these Terms and Conditions.

As at March 2007.