

General Terms and Conditions of Sale and Delivery of BINDER GmbH

The following terms and conditions apply to all our offers, sales, deliveries and services, unless otherwise agreed in writing and provided that the customer is an entrepreneur within the meaning of § 14 BGB (German Civil Code). Customer's terms and conditions do generally not apply to our business. Customer's terms and conditions may only come into effect if and to the extent that we expressly agree to them in writing.

1. Offer and Conclusion of Contract

- 1.1 Our offers are generally non-binding and should only be understood as an invitation to place an order.
- 1.2 Customer's orders shall only be deemed accepted if they are confirmed by us in writing. Our order confirmation is decisive for the scope of delivery.
- 1.3 Ancillary or side agreements to or changes of an already confirmed order require written confirmation by us.
- 1.4 Specifications or other documents that influence our delivery or service must be transmitted to BINDER with the order and signed by both parties. Unilateral references to documents in the order are not valid and will not be taken into account by BINDER.
- 1.5 We reserve all property rights and copyrights to cost estimates, drawings and other documents (collectively referred to as "documents"); the documents may not be made accessible to third parties. Documents belonging to our offers must be returned to us immediately upon our request if the order is not placed.
- 1.6 The technical data specified in our catalogue(s) apply exclusively to devices in the standard version. Modifications through options, conversions or production in accordance with "BINDER Customized Solutions" will lead to deviating performance data.
- 1.7 If technical changes are made to our devices after submission of our offer, we may deliver the technically modified version. In doing so, we are entitled to deviations from illustrations, drawings, descriptions, colours, dimensions, weight, quality and other information, provided that these changes are reasonable for the customer taking into account the interests of both parties.
- 1.8 If the customer has received an order confirmation and does not ask for change requests within 5 working days, the order confirmation shall be deemed accepted. .
- 1.9 The customer may only cancel an order without good cause or withdraw from a confirmed order if BINDER expressly agrees to this action. In such a case, BINDER may charge a cancellation fee of up to 25% of the order value or demand a reasonable amount for services already rendered and/or expenses incurred. Both parties reserve the right to prove higher or lower damages.

2. Prices

- 2.1 Unless agreed separately between the Parties, our prices are "Ex Works" (Incoterms 2020).
- 2.2 For services provided later than 4 months after conclusion of the contract, we may invoice any wage and/or material price increases that have occurred after the offer has been submitted with a reasonable cost surcharge.
- 2.3 For orders under 500.00 EURO (excl. VAT) we charge a minimum quantity surcharge, also called handling flat rate, in the amount of 25.00 EURO. The surcharge will be shown on the

order confirmation and on the invoice.

3. Payment

- 3.1 Our invoices are to be paid within 30 days of the invoice date without deduction. For new customers or customers with – at our discretion – insufficient creditworthiness or liquidity, we are entitled to demand advance payment. Services are due immediately net cash.

In order to ensure a smooth processing of payment transactions, the following information is required when executing a payment:

- Indication of our order or invoice number
- Indication of the customer number
- Indication of the customer's VAT-ID-number
- Indication of the invoice recipient (e-mail address)

Additionally, the customer must pay exactly the amount as stated on our invoice. Additional or reduced amounts cannot be allocated.

If the aforementioned conditions are not met, a correct booking of the payment of the customer cannot be guaranteed. We will then post the payment against the oldest outstanding invoice of the customer. Subsequently, rebookings are no longer possible. In principle, we can offset any payment by the customer against the oldest outstanding claim.

The IBAN or SWIFT/BIC identification data specified on the invoice has to be used for all bank transfers.

If even one of the aforementioned conditions is not met, delivery delays may occur, which we are not responsible for.

- 3.2 All invoices shall be transmitted exclusively in the electronic form.
- 3.3 Payments made in bank transactions are only valid to the extent that we can freely dispose of them at a bank. Invoice settlement by cheque and/or bill of exchange shall only take place on account of payment and requires our prior express consent in the event of bills of exchange. The customer shall bear all costs associated with the payment by bill of exchange and cheque. We are not liable for the timeliness of the protest.
- 3.4 If the payment period mentioned under para. 3.1 above is not met, we are entitled to demand default interest in the amount of 12 % per annum. We reserve the right to assert a higher damage caused by default.
- 3.5 The customer is only entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been acknowledged by us. Due to disputed counterclaims, the customer is not entitled to any right of retention..
- 3.6 If justified doubts arise as to the solvency of the customer or if insolvency proceedings are applied against his assets, all claims arising from the business relationship shall become due immediately. In addition, we are entitled to demand advance payments, cash on delivery or security.

4. Time of Delivery

- 4.1 Dates for our deliveries are only binding if we expressly confirm them in writing. The delivery period begins with the dispatch of the order confirmation, but never before we have received the documents to be procured by the customer, if such are required.
- 4.2 The delivery period or the delivery date shall be deemed to have been met if the delivery item has been handed over to the carrier by the time it expires.

4.3 The delivery period shall be extended appropriately:

- if BINDER does not receive the information that we need to fulfil the contract in good time, or if the customer subsequently requests changes or additions to the originally ordered goods.
- if obstacles occur that BINDER cannot avert despite the use of due care, regardless of whether they arise at BINDER, at the customer or at a third party (e.g. at a supplier of BINDER). Such obstacles include, for example, export and import restrictions, boycott orders of governmental or supranational organizations, official measures or omissions; labour disputes, and other operational disruptions through no fault of their own; epidemics, natural events; hacker attacks and terrorist activities as well as war.
- if the customer or third parties engaged by him are in arrears with the work to be carried out by them or with the fulfillment of their contractual obligations, or if the customer does not comply with the terms of payment.

4.4 Partial deliveries shall be permissible to a reasonable extent.

4.5 In the case of orders against prepayment, the order will only be scheduled after receipt of payment. From this point on, the customer will receive our order confirmation within 24 hours, stating a shipping date.

4.6 Force majeure, operational disruptions, strikes, pandemics or other obstacles for us or our suppliers for which we are not responsible release us from the obligation to deliver for the duration of the disruption and its effects. If we are already in a delay in delivery, the delay shall not be extended by the occurrence of one of the above-mentioned circumstances. We will inform the customer as soon as such circumstances occur. The same shall apply in the event that the obstacle no longer exists.

5. Transfer of Risk / Shipping and Packaging / Transport Damages

5.1 Unless otherwise stated in our order confirmation, our delivery will be carried out "EX WORKS" (Incoterms 2020).

In the case of EX WORKS deliveries, the following also applies: The goods must be picked up within four calendar weeks after provision. If this deadline is exceeded, we store the goods and reserve the right to charge the customer at least 0.5% of the invoice amount of the stored delivery per month or part thereof up to a maximum of 10% of the respective invoice amount.

5.2 If dispatch is delayed due to circumstances for which the customer is responsible, the risk of accidental loss or deterioration shall pass to the customer from the day of readiness for dispatch. Even in these cases, we store the goods at the expense of the customer and are then entitled to charge the customer at least 0.5% of the invoice amount of the stored delivery per month or part thereof up to a maximum of 10% of the respective invoice amount. At the request of the customer and at his expense, we insure the goods against the usual risks.

5.3 We choose the packaging and shipping method at our discretion. The customer is obliged to inspect the delivered goods immediately and to report recognizable transport damage to the delivering carrier on site immediately and to report it to us immediately, at the latest within 1 working day, in writing and with pictures. If the customer fails to do so, the goods shall be deemed to have been accepted with regard to recognizable transport damage.

The customer is also obliged to report any transport damage that is not externally visible within 5 working days of receipt of the goods in writing and with pictures (damage and packaging). If the customer fails to do so, the goods shall be deemed to have been accepted with regard to transport damage that is not externally visible.

6. Warranty / Notice of Defect

- 6.1 We guarantee the design, manufacture and materials being free of defects and in accordance with the respective state of the art as well as the manufacture of the goods being in accordance with the technical standards applicable in Germany.
- 6.2 The warranty period is 24 months from the date of delivery. The following products are excluded from this warranty period:
- Spare parts: 12 months
 - BINDER Ultra-deepfreezers: 5 years. Except:
 - 3 years for the batteries of the option battery-backed alarm system
 - 12 years for vacuum thermal insulation panels.
- 6.3 From the warranty excluded are:
- Wearing parts
 - Damage resulting from improper handling, operation or use and improper use. Damage due to own fault
 - Damage due to chemical, electronic or weather-related influences
 - Damage caused by spare parts that are not original BINDER spare parts
 - Damage caused by unauthorized redesign / modification of our devices by customer or third parties.
- 6.4 The customer must inspect the goods immediately upon receipt for defectiveness and immediately notify obvious or recognizable defects in writing. Complaints about recognizable defects that are not transport damage (see Section 5.3 above) can only be taken into account if they are reported to us in writing within 10 working days of receipt of the goods at the latest.

Hidden defects have to be claimed immediately after discovery in writing.

- 6.5 If the delivered goods actually have a defect within the warranty period, the customer may demand supplementary performance („Nacherfüllung“). We decide whether to deliver a defect-free new item or to remedy the defect. In the event of remedying the defect, we shall assume all expenses necessary for the purpose of remedying the defect, in particular packaging, transport, travel or labour costs, insofar as these are not increased by the fact that the goods were brought to a place other than the place of delivery and provided that the defect occurs within 24 months of the date of delivery (see Section 6.2 above).

Old parts replaced as part of a defect rectification shall become our property. They have to be returned to us on request at our expense.

If the supplementary performance fails for the second time in the case of the same defect within the warranty period, the customer is entitled, at his discretion, to demand withdrawal or an appropriate price reduction. Further warranty rights are excluded. In particular, the customer may only claim damages in accordance with the provisions of sec. 7 listed below.

We shall not be liable for any repair work (maintenance and/or repair) carried out by the customer or by third parties improperly or unauthorised personnel without our prior consent.

- 6.6 **WARNING: For devices that run in unattended continuous operation at the end customer (24 hours/7 days per week/365 days per year), especially for CO2 incubators, climate test chambers and ultra-low temperature freezers, we strongly recommend dividing the samples stored in the cabinets into at least two devices in the event of storage of irretrievable samples. If the customer is a dealer, he is obliged to warn his end customers accordingly.**

7. Liability

- 7.1 We shall be liable in accordance with the statutory provisions if the customer asserts claims for damages based on our intentional or negligent conduct, including that of our vicarious

agents and legal representatives, and our conduct results in injury to life, body or health.

- 7.2 Furthermore, we are liable for damages resulting from the intentional or grossly negligent violation of goods or the assets of the customer by us or our vicarious agents or legal representatives or vicarious agents.
- 7.3 Finally, we are liable for contractually typical, foreseeable damages resulting from the slightly negligent violation of goods or the assets of the customer by us, our legal representatives or vicarious agents, provided that an obligation has been violated by us, the fulfillment of which is essential for the execution of the contract (so-called „cardinal obligation“).
- 7.4 Any further liability, in particular due to loss of profit, is excluded, except in the case of intent and gross negligence.
- 7.5 Our liability for tort is also limited or excluded in accordance with the above rules in accordance with Sections 7.1 to 7.3. Claims arising from the Product Liability Act due to bodily injury or damage to health remain unaffected by the limitation of liability.

8. Reservation of Title

- 8.1 We reserve title to the delivered goods until the customer has settled all claims arising from our business relationship. The customer may only sell the reserved goods in the normal course of business and may neither pledge them nor assign them by way of security; he must inform us immediately of any access by third parties. The customer is obliged to secure our reserved rights when reselling the goods on credit, in particular to pass on the retention of title to his customer.
- 8.2 The customer is obliged to insure the reserved goods against loss and damage during the existence of the retention of title and to notify us of this in writing. If this is not done, we are entitled to take out the insurance ourselves at the expense of the customer.
- 8.3 8.3 The customer assigns his claim from the resale of the reserved goods to us in advance as security to the extent of our ownership share in the sold goods. We accept this assignment already now. The customer is entitled to collect the claims as long as he meets his payment obligations to us and does not fall into financial decline. If the realization of our claims appears to us to be endangered, the customer must enable us to take back the reserved goods at our request or inform his customers of the assignment of claims and provide us with all necessary information and documents. In addition, the right of withdrawal expires in the event of a significant deterioration in the financial situation of the customer. A significant deterioration in the financial situation is presumed for the last 10 days before cessation of payments or before an application for the opening of insolvency proceedings. The return of goods subject to reservation does not imply a withdrawal from the contract.

Should the customer have its registered office abroad and its cooperation is required to agree on a retention of title (e.g. in the case of a register entry), the customer shall take all necessary measures to agree on an effective retention of title in favour of BINDER.

- 8.4 We undertake to release the securities to which we are entitled to the extent that their value exceeds the claims to be secured by more than 20%, insofar as these have not yet been settled.

9. Place of Performance

Place of performance shall be at BINDER's registered office, i.e. at the moment: DE-78532 Tuttlingen.

10. Copyright and License Law: Software Programs / Operating Instructions

- 10.1 Should our deliveries also include fee-based software programs developed by us (e.g. APT-

COM), the following shall apply in the event of resale of such programs by the customer:

- The customer is authorized to resell the software; however, neither the customer himself nor the respective customer of the customer receives the right of use (license) to the software program developed by us solely through the (re)sale via the customer.
- The customer has to point out to its customer that he only receives permission to use it after conclusion of another contract with us (so-called software license agreement), this is done by filling in and sending the attached registration card by the customer to us; the customer expressly informs his respective customer about the registration card system.
- The customer shall hand over to the customer the software package (consisting of software DVD, hardware and additional components if applicable, operating instructions, our General Terms and Conditions for Software License Agreements ("**Software License Terms**") and registration card) as received from us.
- The customer has to name in writing the customers to whom he has sold our software.

Furthermore, we grant the customer a non-exclusive right of use to the APT-COM software. The software is provided exclusively for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The customer may only reproduce, revise or translate the software to the extent permitted by law (§§ 96 a ff Copyright Act). The granting of sublicenses is not permitted.

In all other respects, our „**Software License Terms and Conditions**“ apply both to the APT-COM software and to other software that the customer purchases from us or downloads from our homepage, regardless of whether the software is subject to a fee or free of charge.

- 10.2 The BINDER operating and service instructions are protected by copyright. The unauthorized making of copies and the transfer to third parties are strictly prohibited. We reserve the right to prosecute and, if necessary, to assert claims for damages in the event of infringement.

11. Taking Back of BINDER Climate Chambers

- 11.1 We take back BINDER devices sold to professional end customers after 13.08.2005 after termination of use in accordance with the „Electrical and Electronic Equipment Act“ (of 23.03.2005, Federal Law Gazette I p. 762) and dispose of them properly. However, the end customer has to assume the return and disposal costs incurred or reimburse us. Additionally, the end customer must inform us in writing about the termination of use.

Our claim to reimbursement of costs by the end customer does expire two years after the end of use. This two-year period begins at the earliest upon receipt of the end customer's written notification to us of the termination of use.

- 11.2 In the event that the customer is a dealer, he must impose on his customer - if he is also commercially active - the obligation that the customer of the customer must dispose of the device properly at his own expense after termination of use. If the customer fails to make such an agreement, he himself must take back our devices at his own expense after termination of use and dispose of them properly. We recommend that the dealer ensure that the statute of limitations of his claim against his customer for fee-based disposal only begins after the end of use.

- 11.3 If our devices are sold to a customer based in a country outside the EU/EEA, we will not take back the devices after the end of use.

12. Place of Jurisdiction and Applicable Law

- 12.1 For all disputes arising from this contract, if the customer is a merchant/salesman, a legal entity under public law or a special fund under public law, the action must be brought before the court responsible for us at our registered office (currently DE-78532 Tuttlingen). In addition, we are also entitled to take the customer to court at his registered office.

- 12.2 German substantive law shall be applicable excluding the UN-Convention on the International Sale of Goods („Vienna Convention of 1980).

13. Secrecy and Data Protection

BINDER and the customer undertake to treat all documents, information, aids and software

received in connection with this contract and not generally accessible confidentially as their own trade secrets even after termination of the contract, not to disseminate them unnecessarily within the company and not to make them accessible to third parties – with the exception of subcontractors – either in whole or in part.

Insofar as BINDER processes personal data in its work on delivery and documentation, BINDER will comply with the customer's instructions and the data protection laws.

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