

General Delivery Conditions of Benninger Zell GmbH
Status January 2020

1. Scope

- 1.1 Unless otherwise agreed, exclusively the terms and conditions set out below shall apply for all - also future - deliveries and services (hereinafter summarily referred to as "Deliveries") of Benninger Zell GmbH (hereinafter summarily referred to as "Benninger") to the customers referred to in section 1.2. The terms and conditions of the customer shall not apply, even if Benninger does not explicitly exclude them.
- 1.2 These conditions shall only apply to companies, legal entities subject to public law and special funds under public law (hereinafter referred to as the "Customer").

2. Conclusion of Contract

- 2.1 Unless otherwise specified in the order, the customer is bound to its order for 14 days from receipt by Benninger. Contracts shall only be concluded by the written confirmation of order or the delivery by Benninger.
- 2.2 Verbal ancillary agreements or commitments made by Benninger employees that go beyond the content of the written contract or change these conditions to the disadvantage of Benninger shall only become effective after written confirmation.
- 2.3 The illustrations, drawings, color, weight and dimensional statements made by Benninger are only approximations, unless they are a) expressly designated as binding or b) essential.
- 2.4 Benninger's product descriptions do not constitute any guarantee.

3. Price and Payment

- 3.1 Benninger's prices are understood FCA Zell (Incoterms 2020®) net in EUR plus the costs for packaging and the applicable VAT.
- 3.2 Unless otherwise agreed, 30 % of the price is due after the conclusion of the contract and 60 % of the price before delivery. The remaining 10 % are due after delivery. If the delivery is delayed for causes not ascribable to Benninger, this third rate is due at the latest 30 days after the agreed delivery date.
- 3.3 Every payment shall be effected within 14 days of receipt of the invoice, without any deduction free on Benninger's bank account. The irrevocable payment entrance on Benninger's account shall be decisive for the punctuality of the payment.
- Benninger will only accept bills of exchange or checks on account of payment and only after written agreement. Encashment charges, discount and bill charges, as well as interests, shall be borne by the Customer. They are due immediately.
- 3.4 In case of delayed payment Benninger shall charge from the due date interest of 9 percent points above the base rate, and at least 10 %. Further damage compensation claims remain unaffected.
- 3.5 The customer may offset an account or use a right of retention only if its counterclaims are indisputable or recognized by declaratory judgment.

4. Delivery and Transfer of Risks, Reservation of Self-Supply, Partial Deliveries, Acceptance

- 4.1 Unless otherwise agreed, delivery shall be effected as per FCA Zell (Incoterms 2020®).
- 4.2 The risks shall be transferred to the Customer as per FCA Zell (Incoterms 2020®) even if Benninger has undertaken other services, e. g. the forwarding charges or the transportation by own transport staff or the assembly and/or commissioning, or if an acceptance has been agreed.
- 4.3 If the delivery is delayed for causes not ascribable to Benninger, the risk is transferred to the Customer as from the moment it is in default of acceptance.
- 4.4 Benninger's obligation to deliver shall be subject to timely and correct self-delivery (in particular with pre-material) by Benninger's suppliers, unless the incorrect or delayed self-supply is caused by Benninger. If the incorrect or delayed self-supply is not caused by Benninger, the obligation to deliver shall not apply; in this case, Benninger shall not be liable for compensation.
- 4.5 Partial deliveries in a reasonable extent shall be permitted.
- 4.6 The following shall apply if acceptance has been agreed or is required by law:
- Benninger notifies the Customer in good time of the acceptance date. Acceptance must be performed without delay at the acceptance date specified by Benninger.
 - If the acceptance is delayed for causes not ascribable to Benninger, the acceptance shall be deemed effected after the expiration of an appropriate additional period of time defined by Benninger.
 - An acceptance report shall be compiled, which will be signed by the Customer and by Benninger. If defects are identified during the acceptance, these defects shall be recorded in detail in the report.
 - In case of insignificant defects, in particular those which do not substantially hinder the efficient functioning of the delivery, the customer shall not be entitled to refuse the acceptance.
 - The risk is transferred pursuant to section 4.1, unless expressly agreed that the risk shall be transferred only upon acceptance.

5. Delivery time

- 5.1 Delivery deadlines are only given for indication.
- 5.2 The delivery deadline begins at receipt of the order confirmation, however not before clarification of all details concerning the execution of the order and of all commercial and technical issues, and not before receipt of an agreed installment or security for payment. The delivery period is complied with if the delivery item is made ready for dispatch before the deadline expires.
- 5.3 Compliance with the delivery deadline assumes that the Customer has met all its obligations, e. g. that it (1) provided the necessary provisions, (2) produced the required official certificates or permits and (3) made space and equipment available and (4) provided the agreed payment(s) (of installments) or security(ies) in due time and manner. If it does not do so, or if it does not do so timely, the delivery time shall be extended accordingly. The only case in which this shall not apply is if Benninger is responsible for the delay.
- 5.4 Customer's change requests extend the delivery period until Benninger checked their feasibility and for the length of time

necessary to implement the new specifications in the production / engineering. Should the change request result in the interruption of current production, Benninger may move other orders up and complete these orders. Benninger is not obliged to reserve production capacity during the delay.

- 5.5 Should the delivery be delayed, the liability of Benninger shall be limited, in the event of simple negligence, to 0.5 % of the net invoice amount of the delayed part of the delivery for each completed week, however limited to no more than a total of 5% of this value. This shall not affect the claim for compensation instead of performance pursuant to section 11. The Customer shall inform Benninger at the latest upon conclusion of the contract of any contractual penalties it has agreed with its customers.
- 5.6 Should delivery be delayed for reasons not ascribable to Benninger, Benninger shall invoice for storage in its premises at least 0.5 % of the net invoice amount of the stored delivery per month or part thereof.

6. Force Majeure

- 6.1 Events that are unforeseen, unavoidable, and beyond Benninger's control (e. g. force majeure, strikes and lockouts, operational interruptions, difficulties in obtaining material and energy, transport delays, shortages of labor, energy or raw materials, actions by administrative bodies, as well as difficulties in obtaining authorizations, in particular import and export licenses) shall extend the delivery period for the duration of the disturbance and its effects. This shall also apply if the hindrances occur at Benninger's upstream suppliers or during an existing delay.
- 6.2 Should the hindrance not only be temporary, both parties to the contract shall be entitled to withdraw from the contract. Claims for damages are excluded in the cases mentioned in section 6.1.

7. General Conditions for Assembly, Commissioning and Service

Benninger's General Conditions for Assembly, Commissioning and Service apply for all assembly, commissioning and service work.

8. Right of Termination

If the customer fails to fulfill its obligations (e.g. for payment or for security) or fails to fulfill them in due manner or in due time, it shall be obliged to indemnify Benninger for any damage resulting therefrom, unless the breach of obligation is not ascribable to it. After the expiration of an appropriate additional period of time, Benninger shall be entitled to withdraw from the contract.

9. Retention of title

- 9.1 Benninger reserves ownership in the delivered goods until receipt of all payments and irrevocable credit advices for checks and bank drafts accepted as a result of the business relationship with the Customer. Should an open account relationship with the Customer exist, retention of title applies to the acknowledged balance.
- 9.2 The Customer shall be obliged to handle and maintain the goods delivered under retention of title (retention goods) with care; it shall in particular be obliged to ensure them

sufficiently at the replacement value at its expense against loss and damage. The insurance policy, as well as the proof of payment of the premiums, shall be produced on request to Benninger. The Customer cedes to Benninger any claims from the insurance policies already now, subject to the resolutive condition of the transfer of ownership to the Customer.

- 9.3 The working and processing of the retention goods by the Customer shall always be performed for Benninger, without obliging Benninger. Should our goods be mixed or combined with other goods, Benninger shall acquire co ownership of the new item in the ratio of the net invoice value of the retention goods to that of the other materials. The resulting new item shall be regarded as retention goods within the meaning of this section 9.
- 9.4 The customer shall be entitled to resell the retention goods or the new goods in the proper course of business; however, it however already assigns to Benninger in advance the full amount of all claims that will accrue to it as a result of the resale or reuse.
- 9.5 The customer shall be entitled to collect the claims assigned to Benninger, as long as it meets its payment obligations arising out of the proceeds collected.
- 9.6 Should the Customer fail to meet its payment obligations towards Benninger, Benninger shall be entitled to revoke the permission to resell or use and demand that the Customer inform Benninger about the assigned claims and the corresponding debtors, give all information necessary for the collection of the claims, surrender the relevant documents and inform its debtors about the assignment. The taking back of retention goods shall not constitute cancellation of the contract. If Benninger declares withdrawal, Benninger shall be entitled to free disposal.
- 9.7 The Customer shall notify Benninger immediately of any third party access to the retention goods. Costs incurred in resisting an access shall be borne by the Customer, unless they can be recovered from the third party.
- 9.8 If the value of the securities exceeds Benninger's claims by more than 10 %, Benninger shall release, at the Customer's request, its securities at its discretion.
- 9.9 Should the retention of title not apply under the laws of the country in which the delivered goods are kept, the Customer shall inform Benninger without delay and provide equivalent security. If it fails to comply with this request, Benninger shall be entitled, irrespective of the agreed payment targets, to demand immediate payment of all outstanding invoices

10. Liability for Defects

- 10.1 The customer shall notify Benninger in writing without delay, and at the latest within 8 days of receipt of the goods, of obvious material defects, and at the latest within 8 days of discovery in the event of hidden defects. If these deadlines are exceeded, all claims and rights arising from liability for these defects shall expire.

The notification shall precisely describe the nature and extent of the defects.
- 10.2 Benninger warrants that the goods are provided in compliance with the regulations/guidelines/standards (under

public law) and laws in force in the Federal Republic of Germany. The Customer shall inform Benninger of particular regulations, etc., that apply in the country of use.

- 10.3 The infringement of third party rights shall only be deemed to be a defect if these rights are valid in the Federal Republic of Germany.
- 10.4 In the event of legitimate claims for defects, Benninger shall, at its choice, deliver replacement or repair the goods. Should this remedial action fail, the Customer shall be entitled to demand a price reduction or - in the event of significant defects - withdraw from the contract. In the case of the failure of the remedial action, the Customer is in addition entitled to demand compensation in place of performance, pursuant to section 11.1.
- 10.5 Secondary performance costs, which are incurred due to the transfer of the purchased item after delivery to another place than the commercial establishment of the Customer, shall not be assumed.
- 10.6 If the defect was caused by an essential third party product, Benninger shall be entitled to initially limit its liability to the assignment of the rights and claims, which Benninger may have against the supplier of this third party product, unless satisfaction from the assigned claim or right fails or cannot be enforced by any other means. In this event, the Customer shall again be entitled to the rights arising from section 10.4.
- 10.7 The limitation period is 12 months from the transfer of risks, unless Benninger is liable for bodily injury, violates any of its duties intentionally or with gross negligence, has fraudulently concealed the defect, or has assumed a guarantee going beyond the warranty or if a longer mandatory legal period is provided.

11. General Liability

- 11.1 Claims for damages - of whatsoever nature – against Benninger are excluded if Benninger, its legal representatives or vicarious agents caused the damage through simple negligence.

This exclusion of liability shall neither apply to injury to life, limb or health, nor in the event of the assumption of a contractual guarantee, nor in the event of breach of essential contractual duties. Essential contractual duties are those which enable the fulfillment of the orderly performance of the contract in the first place, and on the compliance of which the Customer can and will regularly rely and the breach of which puts the achievement of the purpose of the contract at stake.

When assuming a guarantee, Benninger's liability shall however be limited to the extent of the guarantee and, in the event of negligent breach of essential contractual duties, to the foreseeable damage typical for the contract.

Claims in accordance with the German Product Liability Act shall remain unaffected.

- 11.2 Claims for damages expire one year after the customer learns about the damage and that it is compensable or, should, without gross negligence, have learned about the damage and that it is compensable. Claims in accordance with the German Product Liability Act for injury to life, limb or health and for defects shall remain unaffected by this.

12. Software

- 12.1 This section 12 is not applicable to the purchase and licensing of the Certon Software. In this case, Benninger's

Supplementary Delivery Conditions for the Certon software apply.

- 12.2 If the scope of delivery includes software (e. g. machine control), the Customer is granted a non-exclusive right to use the supplied software, including its documentation. It is provided for use on the delivery item intended for this purpose. Using the software on more than one system is not allowed.

The customer may not duplicate, revise, translate this software, nor convert it from the object code into the source code. The Customer undertakes not to remove manufacturer information - in particular copyright notes - and not to alter them without the express prior consent of Benninger.

All other rights to the software and the documentation including copies thereof shall remain with us or with the software supplier. The allocation of sublicenses shall be prohibited.

13. Packaging

- 13.1 Packaging shall be invoiced separately by Benninger. The Customer shall take care of disposal of the packaging; Benninger does not take it back.
- 13.2 In deviation from section 13.1, the Customer shall however send the packing identified as the property of Benninger back to Benninger, at the Customer's expense.

14. Know-how ownership

Benninger shall retain all rights of title and copyrights related to its drawings, cost estimates, samples and other technical information – including in electronic form. The Customer undertakes to keep this information in strict confidence and not disclose it to third parties.

15. Place of Performance, Jurisdiction, Applicable Law

- 15.1 Place of performance for all services under the delivery contracts is the registered office of Benninger.
- 15.2 The registered office of Benninger shall be the jurisdiction competent for all disputes arising from the delivery contracts. Benninger shall nevertheless also be entitled to sue in the court competent for the registered office of the Customer.
- 15.3 German law shall apply. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.