

## **1. Scope of application**

- 1.1. The General Terms and Conditions of Sale and Delivery ("GTSD") apply to deliveries and services ("Deliveries") of BAUER MAT Slurry Handling Systems Branch Office of BAUER Maschinen GmbH ("Seller" or "BAUER MAT") to customers ("Customer") (BAUER MAT and Customer also jointly referred to as "Parties", and individually as "Party"). They apply exclusively. Deviating, conflicting or supplementary terms and conditions of the Customer shall only apply if and insofar as expressly accepted by BAUER MAT in writing. This acceptance requirement shall even apply if BAUER MAT performs Delivery to the Customer without stating reservations while aware of the terms and conditions of the Customer.
- 1.2. Individual written agreements of the parties made on case-by-case basis (including side agreements, amendments and additions) shall have precedence over these GTSD.
- 1.3. References to the applicability of statutory legal provisions are provided strictly for clarification purposes. Even without such clarification, statutory legal provisions shall apply unless modified or excluded by these GTSD.

## **2. Offers, contract conclusion**

- 2.1. BAUER MAT offers are subject to deliverability and are subject to change and non-binding with regard to delivery time and delivery quantity.
- 2.2. The Customer's order is a binding offer which BAUER MAT has a period of four weeks to accept. Lack of BAUER MAT's acceptance will result in non-acceptance of the order. The content and scope of the contract are based on BAUER MAT's order confirmation. Verbal side agreements as well as subsequent contract changes and addenda are only valid if confirmed in writing by BAUER MAT. In the order, the Customer must inform BAUER MAT about additional laws and regulations that apply to the object of the contract (e.g. laws and regulations in the country of use in accordance with Section 2.4 of the GTSD, at the location of the Customer's business domicile and/or at the respective delivery destination of the contractual delivery items).
- 2.3. Any technical information or advice issued by BAUER MAT is issued free of charge and under exclusion of any liability. Besides such, BAUER MAT shall undertake advisory obligations - particularly in regard to dimensioning and features of the contractual delivery items - only for consideration and within the scope of a written and express advisory agreement. Consultation services provided by BAUER MAT in no case release the Customer from the obligation to assess the suitability of the contractual delivery items for the intended purpose and to independently determine the selection and dimensioning of the contractual delivery items for the intended use.
- 2.4. BAUER MAT reserves the right to change the contractual delivery items with regard to construction, material and/or design, insofar as this does not negatively affect the agreed quality of the contractual delivery items. BAUER MAT particularly reserves the right to adjust the contractual delivery items to comply with laws and regulations that have changed since the conclusion of the contract in the country of use ("Country of Use") defined in the contract (if applicable). The Customer shall bear the additional costs incurred by such adjustments.

- 2.5. In case BAUER MAT is obliged to bear the costs for customs duties, particularly import duties, for the delivery of the contractual delivery items, BAUER MAT reserves the right to adjust the price of the contractual delivery items accordingly to reflect the additional or reduced costs resulting from customs duties that changed after contract conclusion.

## **3. Delivery time**

- 3.1. Delivery times and Delivery dates ("Delivery Times") are only binding if this has been expressly agreed in writing. BAUER MAT does not engage in transactions at a fixed date (where time is of the essence, i.e. "Fixgeschäfte"). The obligation to comply with the agreed Delivery Times is contingent upon the timely receipt by BAUER MAT of the complete and correct information and documents to be provided by the Customer, upon receipt of necessary approvals and permits (e.g. export permits), upon provision of the agreed collateral and/or collateral in accordance with Section 6.4, upon compliance with the contractual payment terms and fulfilment of other obligations of the Customer. In case such conditions are not timely met, either in whole or partly, the Delivery Times (including the time required to resume the process of contract fulfillment) shall be extended adequately, and the Customer shall carry any additional costs (e.g. storage costs) incurred as a result. The right to claim exception of contract non-fulfillment is reserved.
- 3.2. Delivery delays caused by unforeseeable events correspondingly extend the Delivery Times and deadlines for subsequent performances (*Nachbesserung*), including the time required for resuming the contract fulfillment. BAUER MAT does not assume any procurement risk and is relieved from the obligation to deliver (on time) if, through no fault of BAUER MAT, BAUER MAT is not supplied, or not supplied on time, with the contractual delivery items or the part(s) or materials required for the manufacture of the contractual delivery items. The statutory rights of BAUER MAT in connection with the performance and/or subsequent performance (*Nachbesserung*) being impossible or not reasonably feasible shall remain unaffected.
- 3.3. BAUER MAT reserves the right of retention on the contractual delivery items until the Customer has fulfilled all claims arising under the contract or from the business relation, which became due before the Delivery, irrespective of their legal grounds or the time when such claims accrued. As soon as BAUER MAT asserts the right of retention in writing to the Customer, BAUER MAT's obligations under the contract shall be suspended until the outstanding claims have been settled in full. If the right of retention is exercised, no Delivery delay shall take place.
- 3.4. Any delay on BAUER MAT's side always presupposes that BAUER MAT is at fault and that the Customer has issued a written admonition. For the compliance by BAUER MAT with a Delivery Time, it is sufficient that the contractual delivery item is ready for dispatch, or that the Customer has been notified that the contractual delivery item is ready for collection, regardless of the Party responsible for transporting the contractual delivery item.
- 3.5. If BAUER MAT is in delay, the Customer is entitled to the following liquidated damages, which are not a contractual penalty, provided that the Parties have agreed on a binding Delivery Time. The liquidated damages shall be payable at a rate of 0.3% of the net purchase price of the contractual

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delivery items for each full week of delay. The liquidated damages must not exceed 5% of the net price of the contractual delivery items. If the delay affects only part of the contractual delivery items, the liquidated damages shall be calculated on the basis of the proportional net price of the affected contractual delivery items, unless the Customer cannot use the contractual delivery items as intended due to the delay. In latter case, the net price of all contractual delivery items shall form the basis for the liquidated damages. The Customer's claim to liquidated damages is forfeited unless asserted against BAUER MAT in writing within six months of the date on which Delivery should have taken place.

- 3.6. If the Customer is already entitled to receive the maximum amount of liquidated damages pursuant to Section 3.5 and if an essential portion of the contractual delivery items is still outstanding, the Customer may demand in writing that Delivery be made within a final period of a reasonable length of not less than one calendar week. If BAUER MAT does not deliver within such final period and this is not due to circumstances for which the Customer is responsible or to circumstances of force majeure in accordance with Section 13, then the Customer may solely and exclusively either continue with the fulfillment or, by providing written notice to BAUER MAT, withdraw from the contract with regard to the portion of contractual delivery items which cannot be used as intended due to delivery delay on the part of BAUER MAT and request reimbursement for any payments already made. If the delay affects only a portion of the contractual delivery items, the Customer may only withdraw from the Contract if the Customer is unable to use the (other) contractual delivery items as intended due to the delay.
- 3.7. Liquidated damages in accordance with Section 3.5 and withdrawal in accordance with Section 3.6 are the only remedies available to the Customer in case of delay by BAUER MAT. Any other claims of the Customer based on delay, e.g. substitute performance and further damages, particularly for consequential damages such as downtime costs or cost of idleness, loss of production or use, loss of profit or sales, damages to intangible assets, loss of information or data, shall be excluded, unless BAUER MAT has assumed an explicit guarantee for the Delivery Time or caused the delay with acts of willful misconduct, gross negligence or malice.
- 4. Risk transfer, delivery, inspection, delay in taking possession**
- 4.1. Unless agreed otherwise and in writing, Delivery is "free carrier" (FCA, Incoterms®2020). The place of fulfillment is BAUER MAT's delivering plant. If agreed in writing, goods will be shipped to a destination other than the place of fulfillment, at the Customer's expense and risk. Partial deliveries are permitted at any time.
- 4.2. The time of risk transfer (risk of accidental destruction and/or deterioration of the contractual delivery items) is based on these GTSD as well as on the legal provisions of sales law. If collection by the Customer is agreed, the Customer shall collect the contractual delivery items or have these collected within 14 calendar days of notification of ready-to-ship status unless a longer period has been agreed in a specific case. Otherwise the Customer is in delay of taking possession and shall bear the risk of accidental destruction and deterioration of the contractual delivery items no later than this date.

- 4.3. If the Customer is in delay of taking possession, or fails to cooperate, or if Delivery is delayed for other reasons for which the Customer is responsible, BAUER MAT shall be entitled to compensation for resulting damages including extra costs incurred (e.g. storage costs) in the amount of 0.3% of the net price of the contractual delivery items concerned for every full week of delay, however at a maximum of 5% of the net price of the affected contractual delivery items, as liquidated damages. This shall not be considered as contractual penalty. The right to evidence a higher damage amount and to assert further statutory claims (including contract withdrawal) remain unaffected; the liquidated damages shall however be deducted from further monetary claims. The Customer is entitled to prove that BAUER MAT has suffered no damages or a considerably lower amount of damages than the liquidated damages amount stated above. However, the Customer shall in any case make all payments due as if the contractual delivery items had been delivered by the applicable deadline.
- 4.4. If the Customer without right fails to take possession of the contractual delivery items and BAUER MAT has given a reasonable period of grace and warned the customer of the respective legal consequences in the notice of such period of grace, BAUER MAT may, after the period of grace has expired without the Customer having taken any action, (i) choose to deliver the contractual delivery item to the Customer at the cost and risk of the Customer or otherwise (ii) dispose of the contractual delivery items and deliver to the Customer within a reasonable period that has been extended by the time required for a subsequent production. Such shall not apply in case the Customer is not responsible for the failure to take action during the period of grace.
- 4.5. The Customer is the contractual counterparty of BAUER MAT even if Delivery to a third party is agreed. Third parties do not become parties to a contract by virtue of delivery to them and have no rights or claims under the contract, except as otherwise expressly agreed in writing.
- 4.6. Packaging cannot be returned. The Customer shall dispose of the packaging at its own expense.
- 4.7. If the contractual delivery items or portions thereof have to be returned to BAUER MAT for any reason whatsoever, the Customer must, at its own expense, clean the contractual delivery items of any toxins or substances harmful to health or to the environment prior to their return. The Customer shall furthermore notify BAUER MAT prior to return of how the contractual delivery items have been deployed and utilized and disclose any resulting contamination by such substances, even if these substances have already been removed by cleaning.
- 5. Other services by BAUER MAT**
- 5.1. If the Parties have agreed other services to be provided by BAUER MAT in addition to the delivery of the contractual delivery items and such services are to be provided at a different place of fulfillment (e.g. installations, assembly, commissioning, test run(s)) (jointly referred to as "**Other Services**"), the provisions of this Section 5 shall apply.
- 5.2. The Customer shall, at its own expense, timely ensure that all prerequisites necessary for the provision of the Other Services are in place and provide BAUER MAT with all related information in a timely manner. Such includes particularly obtaining of official permits, organisation of a stable load-bearing, cleared access route and place of assembly,

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provision of equipment and materials necessary for commissioning such as scaffolding, hoists, fuels, water, heating, lighting, electrical power and lubricants, equipment and personnel for transporting the parts for assembly/installation at the assembly/installation site, provide protection of the assembly/installation site and materials against hazards, and provision of protective clothing and equipment as necessary given any particular conditions at the assembly/installation site.

- 5.3. Before commencing provision of Other Services, the Customer must, at its own expense, provide BAUER MAT with the necessary specifications concerning the location of not visible supply cables and pipelines and similar systems as well as the necessary static information, without being requested.
- 5.4. The Customer warrants that the provision of the Other Services can commence immediately upon the arrival of the BAUER MAT personnel and can be performed without delays. If the Other Services are delayed due to circumstances beyond control of BAUER MAT, the Customer shall bear the costs resulting from the delay.
- 5.5. The Customer must implement all precautionary measures necessary to ensure the protection of people and property in the country and at the place of usage, and instruct its own and BAUER MAT's personnel accordingly in this regard. These measures must, at a minimum, meet BAUER MAT's safety standards (BAUER HSE standard), published at [https://www.bauer.de/export/shared/documents/pdf/bauer\\_gro\\_up/hse/BAUER\\_HSE\\_Standard\\_en.pdf](https://www.bauer.de/export/shared/documents/pdf/bauer_gro_up/hse/BAUER_HSE_Standard_en.pdf), as well as the safety rules and regulations applicable in the place and Country of Use.

## 6. Prices and payment terms

- 6.1. Except as specified otherwise in a separate written price agreement between the Parties, prices shall be derived from the price lists in force at the time of contract conclusion, net in euros ("EUR"), "ex works" (EXW, Incoterms® 2020), excluding packing, loading, plus any transaction taxes, particularly value added tax (VAT), fees, customs duties, or public charges due under applicable law. In the case of export deliveries, the Customer shall cooperate on the issuance of the shipment documentation necessary for VAT exemption, and in particular to provide BAUER MAT with the necessary confirmation of export/arrival within 14 calendar days after Delivery. If the Customer fails to fulfill these obligations to cooperate, he shall bear the related VAT.
- 6.2. The prices normally do not include any other services. If BAUER MAT provides installation, assembly, commissioning or other services, the Customer shall bear the agreed compensation for these services, as well as all costs arising from these services (particularly the costs for official authorizations, reasonable travel expenses).
- 6.3. Unless otherwise agreed, for Deliveries in value of EUR 50,000.00 and above, an advance payment of 20% of the total price of the contractual delivery items shall be paid upon conclusion of the contract, and 80% of the total price shall be paid prior to the contractual delivery items being handed over to the first freight carrier. Receivables from Deliveries with value less than EUR 50,000.00 and from other services are payable within 30 calendar days from invoice date.
- 6.4. BAUER MAT has the right to request payment security of its choice from the Customer at any time (e.g. irrevocable and confirmed letter of credit, bank guarantees).

- 6.5. The Customer shall be in payment delay if it fails to pay the claim by its due date. In case of payment delay, default interest of 8% is due. The right to claim further damages in connection with the delay damages is reserved.
- 6.6. If the Customer is in delay of payment, or if it becomes apparent after contract conclusion that the payment claim due to BAUER MAT may be at risk due to Customer's inability to pay, or if the Customer does not provide any security in accordance with Section 6.4 of these GTSD, BAUER MAT shall be entitled to perform any outstanding deliveries only against advance payment or provision of sufficient security. BAUER MAT shall furthermore be entitled to refuse performance and withdraw from the contract in accordance with statutory law; the right to claim any further rights accruing to BAUER MAT, and statutory provisions on the dispensability of setting deadlines remain unaffected.
- 6.7. BAUER MAT further has the right to **increase the prices** for contracts with a delivery time above 180 days from contract conclusion, to reflect any increases in personnel costs due to collective bargaining agreements and/or increases in the prices of materials that occur prior to the Delivery. If BAUER MAT implements an increase of more than 10% of the agreed price, the Customer may withdraw from the contract in writing within 14 calendar days of notification of the price adjustment, without being entitled to compensation. If only one specific performance element is affected by a price increase, the Customer can only withdraw from the entire contract if the Customer cannot have an objective interest in partial performance. If the Customer withdraws from the contract, BAUER MAT shall repay the payments already performed. No further compensation shall be due from BAUER MAT.
- 6.8. The Customer shall only have offsetting or withholding rights for claims which have either been finally upheld by legal judgment or are undisputed. The Customer's rights in case of defects to the contractual delivery items remain unaffected.

## 7. Intellectual property

- 7.1. All rights to work results as well as drawings, images, calculations, models, etc., particularly all intangible assets and property rights therein, that are created within the scope of BAUER MAT's fulfillment of the contractual obligations or were already in existence at contract conclusion (hereinafter jointly referred to as "**Intellectual Property**") are the sole property of BAUER MAT. Intellectual Property also includes inventions, discoveries, methods, improvements, ideas, and innovations (whether protectable or not by intellectual property rights), business secrets, know-how, as well as specifications.  
No Intellectual Property whatsoever, whether it existed at the time the contract was concluded or whether it was created within the scope of the fulfillment of the contract, shall be transferred from BAUER MAT to the Customer as a result of the contract and/or Delivery. BAUER MAT grants the Customer a time-unlimited, non-exclusive, non-transferable, non-assignable, non-sublicensable license for the use of the contractual delivery items and only to the extent that it is necessary for their use. The license is limited to the contractual delivery items and only comes into effect upon full payment of the price and any ancillary claims. If the Customer resells or rents the contractual delivery items to third parties, the Customer is entitled to transfer his license to the buyer or to grant the lessee a sub-license.
- 7.2. Insofar as software is included in the scope of Delivery, the Customer is granted a non-exclusive license to use the

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software supplied, including its documentation. This license on the software is only granted for use on the specific contractual delivery items and may only be transferred and/or sub-licensed insofar. Use of the software on more than one system is prohibited. This does not apply to software explicitly designed for multi-user applications (e.g. WEB applications). The Customer must not copy and/or reproduce the software. This does not apply to the creation of a backup copy by the Customer if this is required for securing the future use of the contractual delivery items. The Customer must not perform reverse engineering, modify or translate, nor convert the software from the object code to the source code. The Customer undertakes not to remove any manufacturer's information, particularly copyright notices, or to change them without express prior consent from BAUER MAT. BAUER MAT and/or the software supplier shall retain all other rights in the software and documentation, including any copies thereof made.

7.3. If BAUER MAT provides the Customer with drawings, images, calculations and other (technical) documentation regarding the contractual delivery items or their manufacture, before or after the conclusion of the contract, they shall remain BAUER MAT's property. The Customer shall not use them for any other purposes but those for which they were provided, without written consent from BAUER MAT. In particular, they must not be copied, reproduced, handed to third parties (except in the event of the contractual delivery items being sold or leased), or published. The Customer undertakes not to remove any manufacturer's information, particularly copyright notices, or to modify them without explicit prior consent from BAUER MAT.

**8. Reservation of title; other collateral provided to BAUER MAT**

8.1. The contractual delivery items remain the property of BAUER MAT until full payment has been received for all payment claims (regardless of their origin) due to BAUER MAT at present and in the future, based on the contract and the business relationship. The reservation of title does not affect the transfer of risk.

8.2. The Customer undertakes to issue all declarations and implement all measures required for creating and maintaining the reservation of title or other securities at BAUER MAT's discretion, in the state or country where the contractual delivery items are located.

8.3. If the value of the existing security for BAUER MAT payment claims exceeds the claims amount by more than 20% over a long period of time, BAUER MAT shall release the corresponding amount of security upon request. BAUER MAT shall select which security is to be released.

8.4. The following shall apply for the duration of the reservation of title:

a) The Customer is entitled to commission and use the contractual delivery items as intended within his ordinary business operations. BAUER MAT's prior written consent is required to exercise disposal over the contractual delivery items in any other manner (such as resale, renting, pledging, transfer as security, etc.). To the extent permitted, the Customer herewith assigns to BAUER MAT all payment claims arising to the Customer from the resale or rental of the contractual delivery items subject to reservation of title that are due from third parties, regardless if the contractual delivery items being sold or

rented were further processed or not. BAUER MAT waives the right to directly collect receivables as long as the Customer meets its payment obligations. BAUER MAT may demand that the Customer disclose the assigned claims, provide all information necessary for the enforcement of these claims, hand over the relevant documents and disclose assignment to third-party debtors.

b) BAUER MAT has the exclusive right to further develop the contractual delivery items. Any processing, redesigning, or further development of the contractual delivery items by the Customer requires prior written consent from BAUER MAT. BAUER MAT shall in any case acquire co-ownership in the new item and/or intellectual property created.

c) BAUER MAT is entitled, but not obliged, to insure the contractual delivery items against theft, breakage, fire, water, accident and transport damage and any other type of damage and risk at the Customer's expense, to the extent the Customer fails to evidence holding such insurance in sufficient coverage amounts.

d) In the event of third-party encumbrance of goods subject to reservation of title, particularly in the event of seizures, the Customer must inform the ownership of BAUER MAT and notify BAUER MAT immediately, and also support BAUER MAT in taking the necessary measures.

8.5. In the event of actions by the Customer in breach of contract – including particularly payment delay – BAUER MAT shall be entitled to take back goods subject to reservation of title or demand assignment of the Customer's surrender claim against third parties, as applicable. The taking back of the contractual delivery items by BAUER MAT does not constitute a withdrawal from the contract.

**9. Liability for defects, notice of defects**

9.1. BAUER MAT shall be liable for defects in the contractual delivery items in accordance with these GTSD.

9.2. BAUER MAT shall be liable for the contractual delivery items having the contractually agreed specifications at the time of delivery, subject to subsequent adjustments (see Section 2.4 of the GTSD).

9.3. BAUER MAT does not assume any liability for defects with regard to the contractual delivery items being suitable for a purpose intended or planned by Customer.

9.4. The weights, dimensions, prices, capacity/performance values, consumption values and other data stated in catalogs, brochures, circulars, advertisements, illustration materials, and price lists are approximate indications. These data are non-binding and do not constitute guaranteed properties.

9.5. The Customer shall inspect the contractual delivery items within 10 working days from receipt and give written notice of all defects within this period, but in any case prior to starting the commercial use of the contractual delivery items. Failure by the Customer to do so shall deem the contractual delivery items to have been approved, unless the defects could not be discerned during a proper inspection or have been fraudulently concealed. If the parties carry out a joint inspection of the contractual delivery items upon Delivery or completion of Other Services by BAUER MAT ("Initial Commissioning"), BAUER MAT shall prepare a report on the result of the Initial Commissioning ("Report") which must be signed by the Customer or an authorized representative of the Customer. Any defects found must be recorded in the Report and remedied by BAUER MAT within a reasonable period of

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time under the liability for defects. The discovery of defects does not entitle the Customer to refuse to accept the contractual delivery items. If defects are discovered at a later date, which could not be discerned during the proper inspection, the notice of defects must be sent within 10 working days from their discovery. Failure to do so shall result in the contractual delivery items being deemed to have been approved with regard to such defects, unless the defects have been fraudulently concealed.

- 9.6. The Customer shall notify BAUER MAT immediately in writing of any defect which could cause further damage as soon as it has been discovered. BAUER MAT is not liable for damages that arise due to the Customer failing to notify BAUER MAT in writing as soon as defects have been discovered or failing to send a notification of defect although it would have been reasonable to expect the Customer to have discovered it. BAUER MAT is also not liable for damages that arise because the Customer fails to immediately implement the measures specified in the documentation.
- 9.7. Liability for defects of title (*Rechtsmängelhaftung*) and liability for claims arising from the infringement of third-party property rights (e.g. copyright, patents, brands, etc.) for all contractual delivery items, as well as liability for material defects for used contractual delivery items, are excluded.
- 9.8. BAUER MAT is not liable for defects caused by materials or constructions provided by the Customer or defects arising after the transfer of risk of the contractual delivery items. BAUER MAT is furthermore not liable for defects caused by defective or improper installation, assembly, operation or improper maintenance performed by the Customer or third parties, nor for defects caused by changes to the contractual delivery items implemented without BAUER MAT's written consent or by repairs incorrectly performed by the Customer or third parties. Nor is any liability assumed for normal wear and tear or normal value depreciation.
- 9.9. If the contractual delivery items are defective upon risk transfer and the customer sends notification of such defect within the period agreed in Section 9.5 of the GTSD, BAUER MAT shall rectify exclusively, at its discretion, by repairing the contractual delivery items or by delivering replacement contractual delivery items. BAUER MAT is entitled to repair or replace defective contractual delivery items at least three times before the subsequent performance can be deemed to have failed. The Customer shall grant BAUER MAT the time and opportunity required for rectifying, and particularly hand over or grant access to the defective contractual delivery items upon BAUER MAT's request. All other claims for defects, except compensation in accordance with Section 10 of the GTSD, are excluded. The customer shall not have the right to refuse to take possession of the contractual delivery items or withdraw from the contract (*Wandelung*) or reduce contract price or to undertake substitute performance.
- 9.10. In fulfillment of BAUER MAT's obligation to rectify, BAUER MAT is also entitled to have the Customer return defective parts for replacement or repair and then send the Customer the necessary replacement parts or repaired parts for the Customer to install itself. If replacing a defective part requires special expertise of the contractual delivery items, the defective parts may be replaced by a service technician at the Customer's premises. Except as otherwise agreed in writing, BAUER MAT shall deliver replacement parts to the Customer's permanent establishment "Carriage and Insurance

Paid" (CIP Incoterms®2020). If the remediation is performed in a country other than the Country of Use of the contractual delivery items, the Customer shall reimburse BAUER MAT for necessary expenses incurred, particularly transport, travel, labor, and materials expenditures, in case the expenses increase are due to the customer having caused the contractual delivery items to be transported to another country. The Customer is to make return shipment of de-installed defective parts "Delivery Duty Paid" (DDP Incoterms®2020) to BAUER MAT's delivering factory. BAUER MAT is entitled to make subsequent remediation contingent upon payment of the price for the contractual delivery items by the Customer. The Customer is entitled however to withhold an appropriate portion of the price in proportion with the severity of the defect.

- 9.11. If the Customer has installed defective contractual delivery items in another item or at a property or attached these to other items, the Customer shall bear the necessary expenses and risk to remove the defective items and install or attach repaired or defect-free new items and/or expenses and risk to remove parts required for subsequent rectification.
- 9.12. The Customer shall reimburse BAUER MAT for expenses incurred from unjustified requests for subsequent repairs (particularly testing and transport costs, expenses for replacement parts, and services provided by service engineers). In such case, no new statutory limitation period for defect claims shall commence.
- 9.13. If the subsequent rectification is impossible due to reasons within BAUER MAT's responsibility, if BAUER MAT fails to commence with the rectification within a reasonable period, or if the reported defect still exists even after three attempts of subsequent rectification, the Customer is entitled to reduce the purchase price or withdraw from the contract. The withdrawal from contract/ reduction of contract price is only possible in the event of major defects, particularly if the contractual delivery items are unusable for their normal use.
- 9.14. The Customer is entitled to claims for damages or reimbursement of futile expenditures also in case of defects, though solely as provided under Section 10 of these GTSD, and excluded in all other cases.

**10. Liability and exclusion of liability**

- 10.1. BAUER MAT's liability, for whichever reason, for consequential damages, particularly for damages that do not occur on the contractual delivery items, such as standstill costs, loss of production and use, loss of profits and revenues, damages to intangible assets, loss of information or data, is excluded.
- 10.2. In any case, BAUER MAT's liability is limited to a maximum total of fifteen percent of the net price of the contractual delivery item.
- 10.3. The limitations of liability stated in Sections 10.1 and 10.2 do not apply to damages caused by acts of willful misconduct, gross negligence or malice committed by BAUER MAT. They also do not apply to personal injury claims and in cases where limitations of liability cannot be effectively agreed due to mandatory legal requirements.
- 10.4. BAUER MAT shall not be liable for damages caused by auxiliary persons of BAUER MAT. Non-contractual liability of such auxiliary persons is excluded.
- 10.5. The liability of principal's for slight and moderate negligence is excluded.

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- 10.6. To the extent that BAUER MAT's liability towards the Customer for damages is excluded or limited, this shall also apply to BAUER MAT's liability for its organs, employees, workers, staff, representatives and vicarious agents as well as to the personal liability for damages of these parties.
- 10.7. The Customer shall, upon first demand, indemnify and hold harmless BAUER MAT and BAUER MAT's organs, employees, workers, representatives and vicarious agents for and from any losses, costs, damage claims, expenditures, liability and other claims for personal injury or property damage resulting from willful intent, negligence, breach of due diligence obligations by the Customer, or caused by non-compliance with safety regulations, inadequate maintenance of the contractual delivery items or inadequate or wrongful operation or use of the contractual delivery items by or on the part of the Customer. The Customer shall also be liable for the Customer's organs, employees, workers, representatives and vicarious agents.
- 11. Contract termination**
- 11.1. The free right of the Parties to withdraw from or terminate the contract is excluded. Except as otherwise regulated in Section 11.2 of these GTSD below, the legal requirements for withdrawal and termination shall apply.
- 11.2. Unless otherwise agreed in these GTSD and/or the contract, any Party may only withdraw from or terminate the contract if the other Party is culpable of breach of a material obligation, and if the Party in breach of such obligation fails to remedy such breach within 30 calendar days of receipt of a corresponding written demand from the other Party. If solely an independent or separable part of the contract is affected by the breach of a material obligation, the right to withdrawal and/or termination shall only apply to that part. Either Party may withdraw from or terminate the contract if the other Party is insolvent or if an application has been filed to start insolvency proceedings over of the other Party's assets. Withdrawal or termination shall always be declared in writing.
- 12. Limitation period**
- 12.1. All claims of the Customer arising from liability for defects and related damage expire after one year from Delivery.
- 12.2. For subsequently repaired or replaced parts, the expiration period for liability for defects and related damage starts again, but ends no later than 6 months from the initial expiration period. From this date on all claims for defects are excluded.
- 13. Force majeure**
- 13.1. A Party shall not be liable for delay or non-fulfillment of obligations under the contract and shall be entitled to suspend the fulfillment of its obligations arising from the contract if, and to the extent that such fulfillment is prevented or made unreasonably difficult by events of force majeure over which neither Party has control nor is responsible for (jointly referred to as "Force Majeure"). An event of Force Majeure exists, in particular, in the following circumstances (provided neither Party has control over or is responsible for it): measures implemented by government bodies (legal or illegal), court provisions or orders, fire, natural disasters, epidemics, pandemics, war, extensive military mobilization, insurrection, seizure, terrorism, sabotage, strikes, power supply restrictions, full or severe breakdown of the IT or IT networks of a Party, and delay in the supplies from sub-contractors caused by such circumstances.
- 13.2. Should a Party be prevented, in whole or in part, from fulfilling its obligations under the contract due to Force Majeure, this party shall inform the other party as soon as possible in writing about the occurrence and the anticipated end of those circumstances. It shall further keep the other Party informed on an ongoing basis of the current status of efforts by the affected Party to avoid and/or mitigate the effects of Force Majeure events. If the Customer cannot fulfill its obligations due to Force Majeure events, it shall compensate BAUER MAT for expenses incurred by BAUER MAT for the storage and protection of the contractual delivery items.
- 13.3. If a Party is unable to wholly or partially fulfill a contractual obligation due to Force Majeure events over a period exceeding 180 days, or if a Party is in performance default for more than 180 days due to Force Majeure events, either Party may withdraw from the contract by providing written notice to the other Party. If BAUER MAT has already partially fulfilled the contract at the time the Force Majeure event takes place, the Customer's right to withdraw is limited to the unfulfilled part of the contract. In this case, BAUER MAT is entitled to compensation for the fulfilled part of the contract in accordance with the agreed prices for the contractual delivery items already delivered as well as other services already provided.
- 14. Foreign trade law, export controls**
- 14.1. The fulfillment of the contract by BAUER MAT shall be subject to the provisional condition that the fulfillment is not prevented by national or international regulations of foreign trade law particularly EU Dual-Use Regulation, German Foreign Trade Law [Außenwirtschaftsgesetz] and German Foreign Trade Regulations [Außenwirtschaftsverordnung]), US Export Control Law, embargoes, import restrictions and/or other sanctions, and particularly for armaments and dual-use goods hereinafter referred to as "Foreign Trade Law". Since Foreign Trade Law is subject to constant amendments and adjustments, it shall be applied to the contract and its execution as amended.
- 14.2. The Customer undertakes to provide all information and documents required under the applicable Foreign Trade Law for export or shipment and to comply with restrictions imposed by government authorities on import or export permits, e.g. re-export requirements. Furthermore, the Customer shall not, neither directly nor indirectly, sell, export, re-export, deliver, transfer or otherwise make contractual delivery items available to persons, companies, institutions, organizations or countries, insofar as such actions are contrary to applicable Foreign Trade Law. Upon request, the Customer shall provide adequate and complete information about the end use of products and services; in particular, issue end-use certificates and send them in original to BAUER MAT as evidence for the relevant government authorities.
- 14.3. If BAUER MAT is prevented from timely delivering or performing due to the duration of the due execution of a customs, foreign or commercial application, approval or examination procedure, an agreed performance period shall be extended by the duration of the delay caused by this official procedure as well as the time required to resume the performance of the contract.
- 14.4. If the Customer culpably breaches Foreign Trade Law, the Customer shall compensate and indemnify BAUER MAT for and from any damages, claims and expenses arising from such breach.
- 14.5. If the permits or authorisations required for the fulfillment of

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Branch Office of BAUER Maschinen GmbH  
outside of Germany**



the contract are not granted or revoked by the competent authorities in accordance with Foreign Trade Law, or if other legal obstacles of Foreign Trade Law permanently prevent the fulfilment of the contract, BAUER MAT shall be entitled to withdraw from the contract in full or in part. This shall also apply if such an impediment to performance occurs after conclusion of the contract. The Customer is likewise entitled to a corresponding right of withdrawal. In the event that the performance is only partially affected by the hindrance to performance, the Customer can withdraw from the entire contract only if the Customer cannot be reasonably expected to accept the partial performance possible. Damage claims accruing to the Customer on the basis of exercising of rights of withdrawal – by either the Customer or BAUER MAT – are excluded.

14.6. If BAUER MAT is responsible for preparing the required export documentation, BAUER MAT shall prepare the required export documentation to the best of its knowledge and belief for the Customer. BAUER MAT shall set the relevant customs tariff numbers for export. The Customer shall inform in advance and in writing of any (country country-) specific peculiarity concerning shipping documents. Unless explicitly agreed otherwise in writing, the Customer only is responsible for the correctness of the customs tariff numbers for importation. The Customer shall have no claims against BAUER MAT based on the customs tariff numbers stated by BAUER MAT to the best of BAUER MAT's knowledge.

**15. Data recording device, use of data**

15.1. BAUER MAT reserves the right to equip the contractual delivery items with a data recording device ("Recorder") and to operate the Recorder for the purposes of monitoring the technical functionality and the technical parameters of the contractual delivery items as well as the administration of the required maintenance, repair and service works. The Customer, hereby, authorizes BAUER MAT including its affiliated companies in the BAUER Maschinen GmbH subgroup and fielddata.io GmbH ("Affiliated Companies") to retrieve, download and save the data generated by such Recorder at any time - either manually or with appropriate data transmission devices (e.g. via mobile communication) – and to use and analyze such data within the scope of the following provisions. If the Parties have entered into a corresponding written contract (e.g. a teleservice contract), BAUER MAT and Affiliated Companies are not obliged to do so. If the data is to be retrieved manually, the Customer shall grant BAUER MAT, Affiliated Companies and/or their authorized representative(s) unlimited access to the contractual delivery items for an indefinite period.

15.2. The analysis of the data shall be essentially used by BAUER MAT and Affiliated Companies to monitor the technical functionality and the technical parameters of the contractual delivery items, to properly perform BAUER MAT's own obligations arising out of liability for defects and to improve its service quality as well as to further develop its products.

15.3. BAUER MAT undertakes and shall cause Affiliated Companies to also undertake to treat all machine data, production data and performance data as strictly confidential and not to disclose it to any third party or to use them for purposes other than those mentioned above. This does not apply if BAUER MAT or Affiliated Companies are required to disclose the data due to legal regulations or official or judicial orders or the disclosure of the data is required to defend or prosecute their rights or fulfil

their obligations (e.g. in a legal dispute).

15.4. Insofar BAUER MAT or Affiliated Companies, at Customer's request, also process personal data (e.g. the name of the respective operator) and make it available for the Customer to read on the basis of a corresponding written contract (e.g. a teleservice contract), all parties involved undertake to strictly adhere to the applicable regulations for the protection of personal data and will agree on corresponding contractual provisions for order data processing by BAUER MAT or Affiliated Companies. The Customer may revoke its consent to the processing of personal data by BAUER MAT or Affiliated Companies at any time with effect for the future.

15.5. If the Customer transfers the contractual delivery items to a third party (e.g. to an affiliated company or based on resale or rental of the contractual delivery items), it must ensure by means of a written agreement that the third party undertakes to comply with the provisions set out in this Section 15.

**16. Choice of law, arbitration clause / place of jurisdiction, concluding provisions**

16.1. These GTSD and/or contractual agreements between the Customer and BAUER MAT are governed exclusively by Swiss substantive law to the exclusion of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

16.2. All disputes, controversy, or claims arising out of or in connection with this contract, including its validity, invalidity, breach, interpretation, or termination thereof (hereinafter jointly referred to as "Dispute") shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with the Rules. The number of arbitrators shall be one arbitrator for disputes in amount up to EUR 1 million and three arbitrators for disputes above EUR 1 million. The seat of the arbitration shall be in Zurich, Switzerland. The arbitral proceedings shall be conducted in English. The decision of the court of arbitration shall be binding and final.

16.3. As long as a dispute is pending, notwithstanding Section 16.2 of the GTSD, BAUER MAT has the right to decide that a competent jurisdiction shall be exclusively responsible for settling such dispute. In this case, the exclusive place of jurisdiction shall be Kempten, Germany, or Zurich, Switzerland, or the general place of jurisdiction of the Customer, at choice by BAUER MAT. Section 16.2 of the GTSD does not apply in this case.

16.4. Should individual regulations of these GTSD or individual contracts concluded in relation hereto be or become invalid, in whole or in part, the validity of the remaining provisions shall remain unaffected. Any invalid clause shall be replaced by a valid one which fulfills the economic purpose behind the invalid clause to the closest possible extent. If such replacement is not possible, the applicable statutory provisions shall govern in place of the invalid clause.

16.5. If these GTSD or other contractual agreements between the Parties are prepared in English and another language, in case of discrepancies the English version shall prevail.

16.6. The Customer may neither assign nor transfer the contract or any individual rights or claims arising therefrom without the prior written consent of BAUER MAT. This shall also apply to all future claims and rights.

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