

1. Validity of these Terms of Delivery

a) The following Terms are applicable to all business relations between BIZERBA SE & Co. KG (in the following BIZERBA) and foreign buyers (in the following CUSTOMERS) excluding all different terms and conditions. They do not apply to legal relations with consumers.

b) Any agreement which modifies or amends these Terms, any supplement thereto and all terms and conditions of the CUSTOMER are valid only if they are confirmed by BIZERBA in writing. **Sales representatives and appointed dealers of BIZERBA are not authorised to make any binding declaration on behalf of BIZERBA.**

2. Offer

Offers from BIZERBA are subject to change until acceptance by both parties. The documentation accompanying an offer only serves as preliminary information for the benefit of the CUSTOMER and is in no case to be considered as a warranty regarding the quality of the described merchandise and/or service and it must not be passed on to third parties.

3. Orders, Confirmation of Orders

a) Orders are binding upon the CUSTOMER. They shall be considered accepted unless BIZERBA declares its refusal within 20 days after having received them.

b) If the merchandise is delivered to the CUSTOMER prior to a confirmation of the order in question by BIZERBA and prior to the expiration of the 20 day period (referred to in Term 3. 'a' above), the CUSTOMER is obligated to properly handle and store the merchandise until the property in it definitely passes to the CUSTOMER or the merchandise is returned to BIZERBA.

4. Prices and Terms of Payment

a) Merchandise prices include the costs of packaging appropriate to the means of transportation designated by the parties. If nothing different is agreed, delivery shall be Free Carrier (FCA); i.e. merchandise prices include the cost of transportation until the merchandise is handed over to the designated carrier or his agent. Notwithstanding clause 1 of this Term (4. a), the costs of boxes and crates will be invoiced separately. Should BIZERBA take back used packing materials from the CUSTOMER, the payment made for those materials will not be refunded.

b) Within the first 6 weeks after the conclusion of the contract BIZERBA will not raise the price for the merchandise. For the time thereafter BIZERBA reserves the right to adjust merchandise prices in pursuance of section 315 of the German Civil Code (BGB). Price adjustments, as that term is used here, do not include price changes resulting from a modification of the content of an order subsequent to its placing, especially if the subsequent modification is made on the request of the CUSTOMER.

c) The CUSTOMER is not entitled to refuse payment due to counterclaims which are not based on this contract. Furthermore, the CUSTOMER shall only have the right to set-off and refuse payment on the basis of uncontested claims or claims awarded by a final judgment issued by a court of proper jurisdiction.

d) In case of a substantial deterioration of the CUSTOMER's financial condition, or other circumstances adversely affecting the CUSTOMER's credit standing, all of BIZERBA's claims shall immediately become due and owing, even if the CUSTOMER has given BIZERBA bills of exchange in payment. In these cases BIZERBA may in its own discretion deliver merchandise only against payment in advance or against provision of security and, in case the CUSTOMER refuses both options aforementioned, withdraw from the contract. In the event of a continuous or substantial violation of these Terms of payment by the CUSTOMER, BIZERBA shall be entitled to claim damages for non-performance after a reasonable time limit for payment has expired. The CUSTOMER's liability for damages due to delay in performance shall not be limited by the foregoing.

e) Place of performance for payments to be made by the CUSTOMER is Balingen. The provisions of paragraph 1 of section 270 of the German Civil Code (BGB) remain unaffected by this Term.

f) **Sales representatives and appointed dealers of BIZERBA are not authorised to collect or grant deferment for payments.**

5. Delivery

a) Any dates quoted for delivery are approximate only. If BIZERBA fails to deliver in time due to unforeseeable events or for reasons which could not have been prevented by exercising due care, the time for delivery shall extend adequately.

b) The time for delivery starts when the confirmation of the order is sent off, but not until an agreed advance payment is made, until all technical details are clarified and until the CUSTOMER has fulfilled all requirements for the carrying out of the transaction incumbent on him.

c) The time for delivery shall be considered observed if the ordered merchandise has left BIZERBA's factory or it is communicated to the CUSTOMER that the merchandise is ready for shipment prior to its expiration.

6. Shipment, Passing of Risks

a) BIZERBA delivers ex works. All risk passes to the CUSTOMER when the merchandise leaves BIZERBA - works at the latest. The foregoing also applies if the transport is carried out with BIZERBA-own means of transportation.

b) If the shipment is delayed for reasons within the responsibility of the CUSTOMER, all risk passes to the CUSTOMER as soon as the merchandise is ready for shipment.

c) In case the CUSTOMER fails to immediately take delivery of the merchandise when it is ready for shipment, BIZERBA will store it for him if possible, at the CUSTOMER's risk. This storage does not release the CUSTOMER from his obligation to pay which falls due at the moment the merchandise is placed at his disposal.

7. Retention of Title

a) BIZERBA retains title to all merchandise delivered until full payment of the purchase price. In transactions with commercial CUSTOMERS, title to the goods shall only pass to the CUSTOMER when all claims against the CUSTOMER having arisen from the business relation with BIZERBA have been paid in full.

b) Any processing of the merchandise is carried out by the CUSTOMER on BIZERBA's behalf. In case of further processing or unification of the merchandise with other goods BIZERBA shall acquire a co-owner's share in the processed product or union of goods. The extent of the co-owner's share is determined by the value of BIZERBA's merchandise, with the relation of the value of the united goods at the time of the processing or unification as a minimum.

c) If the CUSTOMER is a reseller of the merchandise, the CUSTOMER is authorised to sell the merchandise in turnover transactions. The CUSTOMER is not entitled to make any other form of dispositions. With effect from the moment this contract is concluded, the CUSTOMER assigns all future claims to which he may be entitled by virtue of said resale contracts to BIZERBA up to the value of the title to the merchandise retained by BIZERBA according to paragraph 'a' of this Term. The CUSTOMER is entitled to collect the assigned claims. On BIZERBA's demand the CUSTOMER has to notify the assignment to his debtors. Should the CUSTOMER fail to comply with the Terms of payment mentioned above, suspend his payment or draw up protests of bills of exchange or cheques provided for payment, the CUSTOMER shall immediately lose all authorisation to dispose of the merchandise BIZERBA retained title to and to collect the assigned claims. In such cases, BIZERBA shall be entitled to retake possession of the merchandise BIZERBA retained title to at the CUSTOMER's expense.

d) In case the applicable law imposes certain formal requirements for the taking effect of the retaining of title as described in paragraph 'a' of this Term or of the assignment pursuant to paragraph 'b' of this Term, the CUSTOMER undertakes to immediately initiate, at his own expense, the actions and declarations required therefore, to inform BIZERBA of such actions and to send all relevant documents to BIZERBA. If the retaining of title and/or the assignment described in this Term are not recognised under applicable foreign law, the CUSTOMER grants BIZERBA the rights which are, with regard to their legal consequence, comparable in effect. These obligations shall not arise if all of BIZERBA's claims resulting from the delivery of the merchandise are secured by payment in advance, by a confirmed and irrevocable letter of credit or by the provision of security.

e) The CUSTOMER is obligated to immediately inform BIZERBA of any attachment of delivered

merchandise or assigned claims impending or effected by third parties. The CUSTOMER bears the costs of legal remedies against such third party claims as far as they cannot be recovered from the respective third party.

f) If the value of security provided by the CUSTOMER exceeds BIZERBA's claims by more than 20 percent, BIZERBA is obligated upon request of the CUSTOMER to release the aforementioned securities as far as they exceed the amount of BIZERBA's claims.

8. Requirements for Examination and Notice of Defects

a) The CUSTOMER is obligated to examine the merchandise immediately and give written notice of merchandise defects to BIZERBA (**not to sales representatives and appointed dealers of BIZERBA**) within 14 days after the arrival of the merchandise at its final destination.

b) The notification period for defects is met if a written notice containing an exact specification of the defects is sent off in due time.

c) In case the notification of defects is not sent in due time, the delivery shall be considered accepted by the CUSTOMER.

d) Defects which were not apparent on reasonable inspection are to be notified to BIZERBA within 14 days after their discovery at the latest.

9. Warranty and Liability for Defects

a) If the merchandise is defective at the time the risk passes to the CUSTOMER, BIZERBA shall at its discretion rectify the defect or deliver a substitute for the merchandise to the CUSTOMER. BIZERBA shall be entitled to refuse the rectification or the delivery of a substitute if they would cause BIZERBA expenses out of proportion to the value of the merchandise. In this case, the CUSTOMER only has the rights laid down in Term 9 paragraph 'c'. The expenditure for the chosen way to remedy the defect shall be considered out of proportion if the costs for the remedy exceed the value of the merchandise at the time of the passing of the risk by 10 percent.

b) The CUSTOMER is responsible for the choice of software. Software errors causing more than insubstantial interference with system functions shall at BIZERBA's discretion be corrected, eliminated by an advanced software version delivered by BIZERBA, or, as far as it is reasonable, otherwise be corrected by executing BIZERBA's instructions to eliminate or avoid the error's consequences.

c) If BIZERBA fails to rectify the defect of the merchandise within a reasonable time-limit, the CUSTOMER shall at his discretion be entitled to reduce the price for the merchandise, withdraw from the contract or demand damages pursuant Term 11. If the chosen way to remedy the defect is unreasonable for the CUSTOMER, he has the rights laid down in the foregoing clause at once. The rights to withdraw from the contract and to claim damages are excluded in case the defects of the merchandise are not substantial.

d) The warranty period for the merchandise is 12 months. It begins to run at the time the merchandise is delivered or, at the latest, at the date of invoice; in the case of Term 6 paragraph 'c' it begins to run at the time the CUSTOMER is notified that the merchandise is available for shipment. The warranty period does not apply to claims for damages based on liability for defects caused by grossly negligent or intentional breaches of duty by BIZERBA or its vicarious agents, or in case of injury to life, limb or health. Clause 10 applies to other claims for damages.

e) The above warranty is given by BIZERBA subject to the condition that the damage to the merchandise or to other legal interests of the CUSTOMER was not caused by the following:

- inadequate or incorrect information regarding the scope, location and/or conditions for use of the delivered merchandise;
- incorrect installation of the delivered merchandise by the CUSTOMER or a third party, unless the from BIZERBA;
- failure to comply with the instructions given in the operating manual or directly by BIZERBA regarding the putting into service and the operation of the delivered merchandise;
- work performed by persons not authorised by BIZERBA, or use of spare parts or equipment not produced or approved by BIZERBA, especially use of thermal ticket rolls and labels not produced according to BIZERBA's specifications and approved by BIZERBA;
- usual or excessive wear and tear which is not attributable to production flaws or defects in material.

f) The warranties listed above in paragraphs a - d of this Term are, as far as their amount and extent is concerned, given for the use of the delivered merchandise at the agreed place of delivery only. Expenses incurred due to the delivered merchandise being taken to another location outside of the agreed country of delivery are for the CUSTOMER's account.

g) If there is a distribution agreement between BIZERBA and the CUSTOMER, BIZERBA's rectification of the defect consists of the shipment of a substitute for the merchandise. All further expenses resulting from the rectification of the defect are for the CUSTOMER's account; all further warranty claims are regulated by the provisions of the distribution agreement between BIZERBA and the CUSTOMER.

10. Other Types of Claims for Damages

In case of a merely negligent violation of duties by BIZERBA or BIZERBA's agents, BIZERBA's liability shall be limited to the damage which foreseeably and typically arises out of contracts of the present kind. The aforesaid shall not apply to violations of substantial contractual duties and to cases of death or personal injury. Furthermore the limitation of BIZERBA's liability shall not apply to cases of liability under the German Product Liability Act (Produkthaftungsgesetz) for personal injury or damage to products not used for commercial purposes caused by defects of the delivered merchandise.

11. Software

a) Regarding the software and documentation the CUSTOMER will be granted a non-exclusive license for the internal use. The license can only be transferred to third parties as a whole including the delivered software documentation and data carriers; in the case of such a transfer the CUSTOMER has the obligation to entirely erase the software on his data processing systems as soon as he transfers it to the third party.

b) Copies must only be made for purposes of archiving, for replacement or for trouble-shooting. Insofar as the originals contain a copyright notation, the CUSTOMER is to include that notation in the copies as well. Any re-translation of the software into other forms of code without BIZERBA's consent is only permitted within the scope of section 69 paragraph 'e' of the German Copyright Act (Urheberrechtsgesetz).

c) With some devices software or parts of the software are made available to the CUSTOMER for a specific period of time on the basis of a free trial license. After that period of time has expired the trial license lapses. The CUSTOMER can obtain the full license for the use of these software-modules on a royalties basis.

12. Severability Clause

In case any provision of these Terms turns out to be invalid, the other provisions shall remain fully effective.

13. Jurisdiction

For all disputes arising from or in connection with this contract the courts of the Federal Republic of Germany shall have exclusive jurisdiction. The legal venue shall, according to BIZERBA's choice, be Balingen or Stuttgart.

14. Applicable Law

All legal relations between the CUSTOMER and BIZERBA arising directly or indirectly from this contract shall be governed by the laws of the Federal Republic of Germany the application of the UN Sales Convention (CISG) being excluded. All of all these Terms are to be interpreted exclusively on the basis of their German language version.