

General Terms and Conditions of Sale and Service
for bwe Energiesysteme GmbH & Co KG (bwe)

I. General - Scope of Application

1.
Our general terms and conditions of sale and service apply exclusively. Any contradictory terms - or any terms that differ from our terms and conditions - issued by our client shall not apply unless expressly confirmed in writing. Our terms and conditions of sale and service also apply if we provide services and/or deliveries to the client without reservation in the knowledge that the customer's terms and conditions contradict or differ from our own.
2.
All agreements between us and the client concerning the fulfilment of this contract are to be made in writing.
3.
Our general terms and conditions of sale and service only apply to businesses in the sense of §310, paragraph 1 of the BGB (German Civil Code).
4.
Our general terms and conditions of sale and service also apply to any and all future transactions with the client, even if they are not referenced explicitly.

II. Offer - Offer Documents - Cost Estimation - Estimated Offer

1.
Our offers are non-binding, unless otherwise stated on the order confirmation. The order signed by the client constitutes a binding offer. We have the right to accept this offer within 4 weeks by either sending an order confirmation or by delivering the wares during this timeframe. The client must immediately check the order confirmation and inform us of any deviations in writing.
2.
If bwe provides a cost estimation or estimated offer, the stated prices are only binding if expressly agreed with the client. This kind of cost estimation or estimated offer is only binding if the estimation/price offer is confirmed in writing. The cost estimation and the estimated offer are to be paid. Provision of the cost estimation or estimated offer will not be billed if this can be turned to account via the carrying out of repairs.
3.
We reserve all rights of ownership and copyright for images, drawings, calculations and other documents. This applies to all written documents marked as 'confidential'. Before transferring these to third parties or making any changes or developments, the client must obtain our express written permission.

III. Prices and Payment

1.
bwe may request a reasonable advance payment when entering into the contract.
2.
Unless otherwise agreed with the client, our prices are 'ex works', unloaded, and do not include costs for packaging, freight and delivery - these additional costs will be billed separately. We are permitted to invoice the client in full for any freight or delivery costs incurred by the successful delivery of the products by our producer directly to our customer.

3.

When invoicing repairs, the prices for all tools and materials used, as well as for other services, work services, and travel and transport costs will be billed separately. If the repair is carried out based on a binding cost estimation or estimated offer, it should be referenced on the cost estimation or estimated offer, whereby only deviations in the scope of services are to be recorded especially.

4.

We reserve the right to change our prices as necessary if we are affected by cost increases or reductions after entering into the contract, especially with regards to changes in material prices and pay agreements. We will provide appropriate evidence at the client's request.

5.

If the client wishes to contest an invoice, he/she must do so in writing within 4 weeks of receipt. Otherwise, the invoice shall be considered accepted.

6.

Statutory value-added tax is not included in our prices; it will be noted separately on the invoice and charged to the sum valid on the invoice's date of issue.

7.

Payment is to be paid without discount once the invoice has been accepted, delivered or sent. Discounts may only be deducted if expressly agreed in writing. The client shall be in default of payment if payment is not made within 7 days, unless otherwise declared by bwe. In the case of defects, the client does not have the right to retain payment unless the product or repair is obviously defective or the client obviously has the right to refuse acceptance of the product or work. In this case, the client may only retain an amount proportionate to the defect and the predicted costs of rectification (such as correcting a defect). The client is not permitted to exercise claims and rights with regards to defects if he/she has not yet paid the fee and insofar as the amount due (including any possible paid amounts) is proportionate with the value of the defective delivery/work.

8.

If payment conditions are not honoured, or in serious circumstances that cause significant doubt as to the orderer's creditworthiness, all outstanding amounts will be immediately due. We are further permitted to demand advance payments or security deposits for open orders, as well as withdraw from the contract with reasonable notice, or demand damage compensation in place of providing the service if the requested deposit is not paid. We are also permitted to refuse the client further sale of the goods and repossess unpaid goods at the orderer's expense.

9.

The client only has the right to offset if his/her counterclaims are legally established, uncontested or recognised by us. Furthermore, the client may only exercise his/her right of retention insofar as his/her counterclaim affects the same contractual relationship.

IV. The Client's Duty of Cooperation - Repairs on the Building Site

1.

The client is to support repair workers in the carrying out of repairs at his/her own expense.

2.

The client must carry out necessary special actions for the protection of people and objects at the repair location. He/she must also train the repair worker in any special safety regulations, insofar as these are relevant for the repair worker and not previously known. If the repair worker does not adhere to safety regulations, the client must immediately inform bwe.

3.

The client is obliged to provide technical help at his/her own expense, especially:

- a. Provision of an appropriate number of necessary and suitable helpers for the required period of time; bwe is not liable for these helpers
- b. Carrying out of all necessary scaffolding work
- c. Provision of heating, lighting, power, water, including required connections
- d. Protection of repair site and materials from any and all types of damage, and cleaning the repair site
- e. Provision of crane tools (hoist, wheel loader, other cranes)

4.

The client's technical help must ensure that the repair can begin immediately after the repair worker arrives, and can continue without disruption until the client's approval.

5.

If the client fails to fulfil these obligations after a deadline is provided, bwe is permitted but not obliged to undertake the client's obligations at his/her cost. All bwe's other statutory rights and claims remain unaffected.

6.

In the case of imminent danger and potential further damage to the client and the site, bwe is permitted to carry out additional work without an express request, and to deliver and use additional required materials necessary for eliminating the danger. The client is obliged to pay for this additional work, even in the absence of an explicit order.

7.

bwe is permitted to provide the client with an overview of all delivered materials and work immediately after the work has been carried out. The client is obliged to check this overview and to come to an agreement with bwe with regards to payment of this additional work. If the client does not agree, bwe is permitted to charge regular and reasonable fees for work carried out.

V. Repair Deadline, Repair Delays

1.

Repair deadlines are estimated and not binding.

2.

The client may only request a binding repair deadline when he/she provides exact information about the scope of work required.

3.

The binding deadline shall be considered honoured if the object to be repaired is ready for approval by the client by the deadline date, if the contract allows for a trial test before approval.

4.

If additional orders are placed later, or if additional repairs are required, the repair deadline shall be extended as appropriate.

5.

If repairs are delayed due to industrial disputes, such as strikes and lock-outs, or other circumstances not due to the contractor's fault, the repair deadline shall be extended as appropriate as long as the issue has a demonstrably significant effect on the repair.

6.

bwe's correct and timely self-delivery via its suppliers remains reserved. bwe will inform the client immediately if the ordered product is not available.

VI. Approval of Repair Works

1.

The client is obliged to approve the repair works as soon as they are complete and a contractual testing of the repaired object has taken place. If the repair fails to fulfil the contract, bwe is obliged to rectify the issue. This does not apply if the defect is irrelevant for the customer's interests or if it is due to a circumstance caused by the client. The client may not refuse approval if a defect is not significant.

2.

If approval is not given through no fault of bwe, approval shall be considered granted 10 days after the repair work was completed.

3.

Once approval is granted, bwe shall no longer be held liable for any obvious defects, unless the client reserved the right to claim for a specific defect.

VII. Delivery Deadline

1.

The start of the delivery period stated by us depends on all technical issues being cleared up. Details about the delivery time are always approximate, unless otherwise expressly stated in writing.

2.

Our upholding of our delivery obligations depends on the client fulfilling their obligations properly and in good time, especially with regards to the customer providing documents, permits, approval, material orders and payments. The delivery deadline shall be considered honoured if the delivery has left the warehouse at the time of the deadline, or if the client has been notified that the wares are ready to be collected. The defence of unfulfilled contract remains reserved.

3.

The delivery deadline will be extended in the case of industrial disputes, such as strikes and lock-outs, or other circumstances not under our control, insofar as the issue has a demonstrably significant effect on the delivery or provision of the order. This also applies if these circumstances affect a pre-supplier. The circumstances outlined above are also not our fault if they arise when we are already delayed. The client will be informed of the beginning and end of any such circumstances as soon as possible in important cases.

4.

If the customer is in default of acceptance or culpably violates any other duty of cooperation, we shall be permitted to demand compensation for any damages incurred, including any additional expenditure.

5.

Insofar as the requirements outlined in paragraph 4 apply, the risk of accidental deterioration or loss with regards to the purchased product(s) shall be transferred to the client when he/she is in default of acceptance or payment.

6.

We shall be held liable in accordance with legal regulations insofar as the fundamental purchase contract is a fixed date transaction in the sense of §286, paragraph 2, number 4 of the BGB (German Civil Code) or §376 of the HGB (Commercial Code). We shall also be held liable in accordance with legal regulations insofar as a default of delivery for which we are responsible means that the client can claim that his/her interest in further fulfilment of the contract is discontinued.

7.

We shall also be held liable in accordance with legal regulations insofar as the default of delivery constitutes intent or gross negligence for which we are responsible, or if the fault of our representatives or agents can be attributed to us. Insofar as the default of delivery is caused by a breach of contract due to gross negligence on our part, we shall only be held liable for compensation for foreseeable, typical damages.

8.

We shall also be held liable in accordance with legal regulations insofar as we are responsible for the default of delivery and it constitutes a culpable violation of an integral contractual obligation; in this case, damage compensation is limited to the foreseeable, typical damages.

9.

Otherwise, we shall be liable for a fixed default compensation of 0.1% of the delivery value for each full week of default, but the total amount shall not exceed 5% of the delivery value.

10.

The customer's further statutory claims and rights remain reserved.

VIII. Transfer of Risk - Packaging Costs

1.

Unless otherwise stated in the offer signed by the customer, delivery is agreed 'ex works'.

2.

Once the wares are provided to the customer for loading, all risk is transferred to the client. This also applies to partial deliveries and if we are covering delivery costs.

3.

Special agreements apply to the return of packaging.

4.

At the client's request, we can take out transport insurance for the delivery; all costs incurred are to be covered by the client.

5.

The transport company is liable for all transport damage and loss of products. These damages are to be established in the presence of the transport company and must be immediately submitted to the transport company and us in writing.

IX. Defect Liability in Purchase Contracts

1.

The quality of the wares depends exclusively on the contractual agreement with our client and not on any promotional claims, brochures, advice, other descriptions of services, measurements, weight, user data, operational costs or similar. The entries are approximate, unless expressly confirmed in writing as binding. A guarantee e.g. in the sense of §434 of the BGB (German Civil Code) is not included.

2.

If our client declares a defect, he/she must allow our representative to view and inspect the affected object. If our representative is not allowed access, any guarantee claims related to the defect will no longer apply.

3.

There is no guarantee for damages caused by the following circumstances:

Unsuitable and improper use, incorrect assembly and/or operation by the customer or a third party, natural wear and tear, incorrect or inattentive use, unsuitable operational material, replacement materials, defective construction work, unsuitable building ground, chemical, electro-chemical or electrical effects, insofar as we are not responsible.

4.

The client's rights of defects depend on the fulfilment of the obligation to inspect and contest being properly fulfilled in accordance with §377 of the HGB (Commercial Code).

5.

If there is a defect in the purchase object, we are permitted to choose to either rectify the defect or deliver a replacement product at our discretion. In the case of such supplementary performance, we shall cover necessary costs up to the purchase price and only as long as there are no additional costs incurred from the purchased object being delivered to a different location from the place of fulfilment.

6.

If the supplementary performance is unsuccessful, the customer is permitted to either withdraw or request a price reduction at his/her discretion.

7.

We shall be held liable in accordance with legal regulations insofar as the client claims for damage compensation concerning intent or gross negligence on our part or that of our representative or agent. Insofar as we are not responsible for any intentional breach of contract, damage compensation liability shall be limited to foreseeable, typical damages.

8.

We shall be held liable in accordance with legal regulations insofar as we culpably violate an integral contractual obligation; damage compensation shall also be limited to foreseeable, typical damages in this case.

9.

Liability relating to damage to life, health or body remains unaffected; this also applies to compulsory liability according to Product Liability Law.

10.

Unless otherwise stated above, liability is excluded.

11.

The statute of limitations for defect claims is 12 months from the transfer of risk. This does not apply to a sale concerning an object generally used for construction that caused the defect. Insofar, statutory periods apply.

X. Defect Limitation for Repair Services

1.

After the repair has been approved, we shall be liable for defects in the repair, excluding all other customer claims unaffected in regulation 4 of this paragraph and the regulation concerning our liability in section IX in that we are to remedy the defect. The client must inform us immediately in writing as soon as any defect is established.

2.

We shall not be held liable if the defect is irrelevant to the customer's interests or is due to circumstances caused by the client. This especially applies to other parts used by the customer.

3.

If changes or repairs are made by the client or a third party that are unsuitable or without bwe's permission in advance, bwe shall not be held liable for any related consequences. Only in serious cases of endangerment of operational safety and to avoid disproportionate levels of damage, whereby bwe should be informed immediately - taking statutory exceptions into account - the customer has the right to either rectify the defect him/herself or contract a third party to remedy the defect and demand that bwe cover the necessary costs - only within the realms of legal regulations and only if bwe was provided with a reasonable deadline before which to repair the defect but this deadline was not honoured.

4.

Insofar as the objection proves justified, bwe shall cover direct costs incurred for the replacement part and delivery related to repairing the defect. bwe shall also cover costs for the removal and installation, provision of necessary assembly and auxiliary workers, including travel costs, insofar as the burden on bwe is proportionate and reasonable.

5.

The client shall cover necessary expenses relating to the supplementary performance (especially remedying defects) insofar as they are not increased by the delivery object having to be brought to a different location than the repair location. Regardless of other bwe claims, the customer must send bwe the expenses to check and - if requested - to remedy the defect in the case of an unjustified defect complaint.

6.

If bwe fails to honour a set deadline for repairing a defect - taking legal exceptions into account - the client has the right to reduce payment within the realms of legal regulations. If the repair is demonstrably of no interest to the client despite a reduction in price, the client may withdraw from the contract.

7.

All client claims - regardless of their legal grounds - are limited to 12 months. Damage compensation claims are limited by the legal periods. If bwe carries out repairs on a construction and causes a defect through this, legal deadlines shall also apply.

XI. BWE Liability, Liability Limitation

1.

Any further liability for damage compensation not outlined in IX and X is excluded, regardless of the legal nature of the validating claim. This applies especially to damage compensation claims relating to fault when signing the contract or to tortious claims to compensation for property damages in accordance with §823 of the BGB (German Civil Code).

2.

If parts of the object to be repaired are damaged through bwe's fault, bwe shall either carry out repairs or delivery of a new product at its discretion. This duty of replacement is limited to the amount of the contractual repair price. Otherwise, paragraph 3 of this section shall apply.

3.

If the object to be repaired cannot be used in accordance with the contract due to circumstances for which bwe are responsible as a result of failure to fulfil, or insufficient fulfilment of, suggestions and advice either before or after the contract was entered into - especially with regards to instructions for operating and maintaining the object to be repaired - then the regulations in this section concerning defect claims shall apply, with the exclusion of further customer claims.

4.

With regards to damages not directly to the object to be repaired, bwe shall be held liable only in the following cases, regardless of the legal grounds:

a. Intent

- b. Gross negligence of the owner/body or management
- c. Culpable injury to life, body, health
- d. Defects that were maliciously concealed
- e. Insofar as Product Liability Law requires liability for personal or property damage with regards to objects in private use.

5.

The limitation in paragraph 1 also applies insofar as the customer claims for damage compensation for useless expenses instead of compensation for damages in place of performance.

6.

Insofar as our liability for damage compensation is excluded or limited, this shall also apply with regards to liability for personal damage compensation for our employees, workers, colleagues, representatives and vicarious agents.

XII. Retention of Ownership

1.

We reserve ownership of the sold item until all payment relating to the financial transaction with the customer has been received in full. If the customer violates the contract in any way, especially by default of payment, we are permitted to repossess the purchased item. If we repossess the sold item, this constitutes a withdrawal from the contract. After we have reclaimed the item, we are entitled to dispose of it and any proceeds will be used to offset other debts, after reasonable disposal costs have been deducted.

2.

The customer is obliged to handle the purchased item carefully. He/she is especially obliged to sufficiently insure the object against fire, water and theft to its initial purchase price at his/her own expense. Insofar as maintenance and inspection work is necessary, the customer must carry this out at his/her own expense in a timely manner.

3.

Due to its claim from the repair contract, bwe has a right of lien to the customer's object to be repaired in its possession. This right can also be exercised based on claims from works previously carried out, replacement deliveries and other services, insofar as these apply to the object to be repaired.

4.

In the case of seizure or any other kind of third party access, the customer must inform us immediately in writing so that we can bring a claim in accordance with §771 of the ZPO (Civil Process Order). Insofar as the third party is not able to compensate us for all judicial and extrajudicial costs for the claim in accordance with §771 of the ZPO, the customer shall be liable for losses incurred by us.

5.

The customer is permitted to further sell the purchased object in the proper course of business, but shall assign us the invoiced final sum (including VAT) of our claim from all subsequent claims from the sale to his/her customer or third party, regardless of whether the purchased product was further processed before being sold on. The client remains entitled to collect this claim after this assignment. Our authority to collect this claim ourselves remains unaffected. We are obliged, however, not to collect this claim as long as the customer fulfils his/her payment obligations concerning the received income, is not in default of payment and insolvency proceedings have not been opened against him/her, and payment has not been stopped. However, if this is the case, we can demand that the customer notifies us of the assigned claims and related debtors, as well as provides us with all information and related documents required for collection, and notifies the debtor (third party) of this assignment.

6.

The processing or restructure of the purchased object by the customer is always carried out for us. If the purchased project is processed with other items that do not belong to us, we shall have joint ownership of the new object proportional to the value of the purchased item (invoiced final sum including VAT) in relation to the other processed items at the time of the processing. The same shall apply to this new item as to the delivered item of which we have retained ownership.

7.

If the purchased item is inextricably combined with other items that do not belong to us, we shall have joint ownership of the new object proportional to the value of the purchased item (invoiced final sum including VAT) in relation to the other combined items at the time of combining. If the combining takes place in such a way that the client's object is to be seen as the main component, it is agreed that the client shall transfer us proportional joint ownership. The customer guarantees either sole or joint ownership for us.

8.

The client shall assign us the right to secure against him/her our claim arising against a third party from the combination of the purchased item with a site.

9.

We are obliged to release security at the customer's request, insofar as the realisable value of our security exceeds the claim to be secured by more than 10%; we may decide what security to release.

XIII. Cancellation Costs

If the customer withdraws from the contract without justification, we may demand 10% of the agreed price to cover costs incurred by processing the contract and for loss of profit; our ability to claim for higher damages incurred remains unaffected. The customer has the right to prove that we incurred lower damages.

XIV. Place of Jurisdiction - Place of Fulfilment

1.

Insofar as the customer or supplier is a business, our registered office shall be the place of jurisdiction. However, we are also permitted to take legal action against the client at the court of his/her habitual place of residence.

2.

German law applies; the UN Sales Convention is excluded.

3.

Unless otherwise stated in the order or order confirmation, our registered office is the place of fulfilment.