

General Terms and Conditions of Sale bavius technologie gmbh

Version: November 2019

I. General, Scope

1. These General Terms and Conditions of Sale (“**General Sales Conditions**”) apply to all offers, order confirmations and contracts concerning goods and services of all kinds (collectively “**Services**”) provided by bavius technologie gmbh, its subsidiaries and parent companies, as well as their legal successors (each individually “**Contractor**”) in business dealings with entrepreneurs within the definition of Section 14 German Civil Code (*Bürgerliches Gesetzbuch*, BGB), legal entities under public law or special funds under public law (in each case the “**Customer**”).

2. All contracts between the Contractor and the Customer and individual offers, orders and order confirmations are governed exclusively by the valid version of the General Sales Conditions. The valid version of the General Sales Conditions can be accessed at <https://www.bavius-technologie.com/en/about-us/downloads/>. Alternatively, the Customer can request a copy of the General Sales Conditions from the Contractor via e-mail at sales@bavius-technologie.com.

3. On first performance of a Service governed by the General Sales Conditions, the Customer acknowledges their exclusive application for all further offers, orders, contracts and other legal transactions, even when their application is not again specifically agreed.

4. The application of general terms and conditions of the Customer that contradict or deviate from these General Sales Conditions is hereby expressly rejected, unless the Contractor expressly consented to their application, in textform. The General Sales Conditions also exclusively apply if the Contractor, in full knowledge of general terms and conditions of the Customer that contradict or deviate from these General Sales Conditions, renders a Service without reservation.

II. Conclusion of Contract

1. Offers of the Contractor are non-binding; the Contractor reserves the right to prior sale.

2. A contract is concluded only upon confirmation of the order by the Contractor or – if the Contractor issued an offer designated binding and with a time limitation – upon timely acceptance by the Customer. The Customer is bound to its declaration issued in response to a non-binding offer of the Contractor with the intention of concluding a contract (customer offer) for the period of two weeks.

3. Offers, acceptance and order confirmations must be made in textform.

III. Scope, Deviations

1. The order confirmation issued by the Contractor (including any annexes thereto) is authoritative with respect to the scope of the contract.

2. Side agreements and amendments to the scope must be confirmed by the Contractor in textform.

3. The Contractor is entitled, following conclusion of the contract, even without the prior consent of the Customer, to make alterations to the material selection, the components selection, the version or design, provided such alteration is necessary during the term of the agreement (i.) due to a mandatory change in (a) the technical standard (b) the legislative framework or (ii.) in compliance with a uniform model policy of the Contractor and the alterations are of at least the same standard and do not in any way impede the usability of the Service. If the relevant amendment is unreasonable for the Customer in an individual case, it has the right to withdraw from the contract.

IV. Prices, Means of Payment, Default of Payment, Payment Security, Set-off and Retention, Assignment

1. The machines offered correspond in terms of configuration, component parts and the selection of component parts/modules to the Contractor’s current standard. Purchasing terms of the Customer or procurement rules (*Bezugsquellenvorschriften*) are not taken into account. Compliance with such provisions may result in price changes.

2. Prices are net and subject to VAT at the applicable statutory rate, unless otherwise provided in a separate agreement in textform. VAT at the statutory rate applicable on the invoice date is stated separately on the Contractor’s invoice.

3. Surcharges, special services and/or ancillary services will be charged separately, based on a separate agreement in textform.

4. Unless agreed otherwise in textform, invoices are payable without deduction immediately upon receipt by the Customer.

General Terms and Conditions of Sale bavius technologie gmbh

5. Unless otherwise agreed in textform, the following schedule applies to payments for machine deliveries:

- 30% down payment upon issuance of order;
- 60% after acceptance / delivery release at Contractor's plant;
- 10% on acceptance of the machine at the destination.

6. The Contractor reserves the right to accept cheques and bills of exchange on a case-by-case basis. All payments are deemed to have been rendered only when finally credited to the Contractor's bank account. Costs attributable to payment by cheque or bill of exchange, in particular discount costs, bills of exchange or stamp costs, as well as bank charges, must be borne in full by the Customer.

7. In the event of non-compliance with the payment terms and in the event of knowledge of circumstances that call into question the creditworthiness of the Customer, the Contractor expressly reserves the right to make any further performance of Services conditional upon the Customer rendering advance payment or furnishing appropriate security. The Contractor may set a reasonable period for this. Upon fruitless expiry of that period, the Contractor may refuse to render any Services not yet performed and withdraw from all contracts concluded with the Customer. Compensation claims of the Customer in this context are excluded. This is without prejudice to any further rights of the Contractor.

8. In the case of the provision of Services by the Contractor outside the Federal Republic of Germany, the Contractor may demand that the Customer provide a bank guarantee, an irrevocable and confirmed letter of credit or a directly enforceable, guarantee of performance, such guarantee applicable for an unlimited time, in each case issued by a banking institution recognised in the Federal Republic of Germany, to the value of the Service ordered. All costs connected with the furnishing of security must be borne by the Customer.

9. In the event of default in payment by the Customer, default interest of 9 percentage points above the applicable base rate is payable in each case. The Contractor reserves the right to assert damage in a higher amount.

10. The Customer is entitled to set-off counterclaims only insofar as such counterclaims have been conclusively legally determined, are uncontested or have been acknowledged by the Contractor.

11. The Customer has a retention right only insofar as its counterclaim is based on the same contractual relationship.

12. An assignment or pledge of rights and claims of the Customer against the Contractor is subject to the prior consent of the Contractor in textform.

V. Dates, Deadlines, Performance Periods

1. As a rule, dates, deadlines and performance periods for the rendering of the Services are non-binding and are binding on the Contractor only if they have been designated binding, in textform.

2. Dates, deadlines and performance periods commence only upon (i.) provision of any necessary official certifications or permits, (ii.) fulfilment by the Customer of all contractual and cooperation duties (e.g. approval of constructions and layouts, provision of workpieces and workpiece drawings), (iii.) the payment of any advance payment due by the Customer and/or (iv) the furnishing of any security described in Section IV. 8. of the General Sales Conditions.

3. In the case of force majeure or other impediments beyond the control of the Contractor, such as work stoppages, strikes, lock-out, sabotage, governmental prohibitions, war, civil unrest, energy shortages and transportation difficulties, as well as disruptions to operations etc., the deadlines will be extended and the dates will be postponed based on the effects of such circumstances. The same applies to deadlines set by the Customer for the performance of the Services of the Contractor, in particular deadlines for subsequent performance. These time extensions also apply when the Contractor is already in default with the rendering of a Service. The Contractor must notify the Customer of any such delays as soon as possible, stating the expected commencement and end thereof.

4. If the Contractor is in default of performance for reasons for which it is responsible and that are not stipulated in Section V. 3. of the General Sales Conditions, the damage caused by delay that must be demonstrated by the Customer is limited to 0.5% of proportion of the price attributable to the delayed part of the Service for each full week of delay, but no more than 5% of the price attributable to the delayed part of the Service, provided the Contractor did not act intentionally or grossly negligently. The Contractor has the right to demonstrate that the Customer did not incur any loss or that such loss was less in individual cases. Further claims of the Customer based on delays are excluded unless the Contractor acted with intent or grossly negligently.

General Terms and Conditions of Sale bavius technologie gmbh

VI. Retention of Title

1. The parties agree the following retention of title. The retention of title serves to secure existing current, future and conditional claims of the Contractor against the Customer, irrespective of the legal basis thereof (the "**Secured Claims**").
2. The Contractor reserves ownership of the supplied goods until such time as all Secured Claims have been satisfied in full. The goods, as well as the substitutes covered by the retention of title pursuant to this Section VI. of the General Sales Conditions are collectively referred to as "**Reserved Goods**".
3. The inclusion of individual Secured Claims on current account or the balancing and acknowledgement thereof do not set aside the retention of title.
4. The Customer is required to handle the Reserved Goods with due care until such time as ownership has passed in full. The Customer is under an obligation, in particular, to take out adequate insurance for the Reserved Goods against fire, water damage and theft at reinstatement value. If maintenance and inspection work is necessary, the Customer is required to carry out such work at its own cost and in a timely manner.
5. If the legal system of a state to which the goods are to be delivered stipulates specific conditions for the validity of the retention of title – in particular also vis-à-vis the Customer's creditors – the Customer undertakes without undue delay at its own cost to take all necessary measures in order to secure the legally valid establishment of the retention of title and the maintenance thereof until the time of payment of all claims, including future and conditional claims, to which the Contractor is entitled against the Customer – irrespective of the legal basis of those claims.
6. If the legal system of a state to which the Reserved Goods are to be delivered does not permit the valid agreement of a retention of title but allows the Contractor to reserve other rights in the Reserved Goods or to have the same granted to serve to secure the Secured Claims, the Contractor is free to exercise all such rights. The Customer is required to cooperate with all measures that the Contractor wishes to take to protect its ownership rights or other rights in the Reserved Goods to secure the Secured Claims.
7. The Contractor has the right, following prior setting of a reasonable deadline, to demand the return of the Reserved Goods pursuant to Section 985 German Civil Code (*BGB*) ("**Claim for Restitution**") and to withdraw from the contract if the Customer is in breach of contract – in particular if it is in default of payment. The costs and expenses involved in taking back the Reserved Goods must be borne by the Customer. The Claim for Restitution does not constitute withdrawal from the contract which would, if applicable, have to be declared separately by the Contractor. The pledge by the Contractor of the Reserved Goods does not constitute withdrawal from the contract either. The Contractor has the right to utilise the Reserved Goods that have been taken back. The proceeds of such utilisation will then be offset against the sums owed to the Contractor by the Customer. A reasonable sum to cover the costs of the utilisation will first be deducted.
8. The Customer is entitled to use the Reserved Goods in the course of its ordinary business dealings and to process and sell the same. The pledge or furnishing of the Reserved Goods as security are not permissible.
9. The processing of the Reserved Goods by the Customer to make a new moveable item is in each case carried out in the name of and for the account of the Contractor as the manufacturer. In such cases, it is agreed that the Contractor directly acquires ownership in or – if the processing involves materials from various owners or the value of the processed item is higher than the value of the Reserved Goods – co-ownership (*Bruchteilseigentum*) in the newly-created item proportionate to the value of the Reserved Goods to the value of the newly created item. The value of the Reserved Goods is determined based on their contract price, taking account of a reasonable used materials discount.
10. The Customer must store the Reserved Goods separately from goods owned by third parties or owned by the Customer ("**Third-Party Products**"). If, contrary to this obligation, Reserved Goods are mixed or combined with Third-Party Goods and if the Reserved Goods can no longer be separated from the Third-Party Goods, the Contractor acquires co-ownership in line with the relevant statutory provisions. If the Customer acquires sole or co-ownership as a result of the amalgamation or combination, with effect from today it assigns to the Contractor, who accepts this assignment, co-ownership proportionate to the value of the Reserved Goods to the Third-Party Goods at the time of the amalgamation or combination. The value of the Reserved Goods is determined based on their contract price, taking account of a reasonable discount for used materials. In this case, the Customer must at no extra cost store the goods owned or co-owned by the Contractor, as these goods are also deemed Reserved Goods.

General Terms and Conditions of Sale bavius technologie gmbh

11. In the event of the further sale of the Reserved Goods, the Customer with effect from today assigns to the Contractor the resulting claims against the purchaser as security – and in the case of the Contractor's co-ownership in the Reserved Goods, pro rata, based on its ownership share – together with all ancillary rights and with priority ranking above all others. The Contractor hereby accepts the assignment. The same applies to other claims that take the place of the Reserved Goods or are otherwise established with respect to the Reserved Goods, such as, for instance, insurance claims or claims in tort in the event of loss or destruction.

12. The Contractor authorises the Customer, such authorisation being revocable, to collect the claims assigned to the Contractor in its own name and for the account of the Contractor. If the Customer also fulfils its payment obligations vis-à-vis third parties, the Contractor will not exercise its own collection authorisation. However, the Customer must on demand by the Contractor notify the Contractor as to the identity of the debtors of the assigned claims and provide notice of such assignment to such debtors. At all events the Contractor is authorised also to notify the debtors of the assignment itself.

13. If the Customer includes a claim assigned to the Contractor established by the resale of the Reserved Goods in an existing current account agreement with its customer, it is agreed that the current account receivables are deemed assigned in full to the Contractor. Following balancing, this will be replaced with the acknowledged account balance, which will be deemed to have been assigned up to the amount of the original claim. The Customer is authorised to otherwise assign the claims assigned to the Contractor only in the course of "true" factoring transactions. Such assignment takes effect only once the factor (the bank) undertakes upon assignment of the claim in each case to disburse to the Contractor the amount of the claim, less the del credere fee.

14. The Customer is required without undue delay to notify the Contractor of compulsory enforcement measures by third parties concerning the Reserved Goods or the assigned claims, and to hand over the documents required to lodge an objection. In the case of suspension of payment, the application for or initiation of insolvency proceedings (without prejudice to any statutory rights of the insolvency administrator) or judicial settlement proceedings, the right to the resale, utilisation or installation of the Reserved Goods lapses together with the authorisation to collect the assigned claims. In the event of a judicial cheque or bill of exchange proceedings, the collection authorisation also lapses. In the foregoing cases, the Contractor has the right to collect the Reserved Goods.

15. The Contractor is required to release the Reserved Goods and their substitutes (goods or claims) on demand and at the choice of the Customer or to reassign them, provided the value exceeds the value of the Secured Claims by more than 10%. The value of the Secured Claims is determined based on their realisable value.

VII. Acceptance, Transfer of Risk

1. Unless otherwise agreed in textform, the goods are dispatched EXW (Incoterms 2010), plant Baienfurt, for the account of and at the risk of the Customer.
2. In the case of the collection of the goods by the Customer or third parties commissioned by it, the risk passes to the Customer when the goods leave the loading equipment (e.g. conveyor, pallet truck, forklift, etc.) at the collection site of the Contractor. The vehicles used by the Customer or third parties commissioned by it for the collection must be suitable in terms of their technical specifications to transport the goods and must be adjusted to fit the loading equipment at the Contractor's collection site.
3. If the parties agreed in textform, on the acceptance of the Service, this will be decisive for the transfer of risk.

VIII. Assembly, Installation, Operation and Acceptance

1. The provisions of this Section VIII. 1. to 7. of the General Sales Conditions apply to the assembly, installation and operation of a machine by the Contractor, provided this is owed under the contract and unless otherwise agreed in textform.
2. Prior to commencement of the assembly and installation of the machine, the Customer must provide the Contractor with all necessary information concerning concealed electricity, gas and water pipelines or similar plant at the location and voluntarily make available any documentation relating hereto.
3. In good time prior to the agreed date for the assembly and installation of the machine, the Customer must at its own cost carry out all preliminary work, such as excavation work, construction work, salvage work, breaking work, scaffolding work, plastering, painting and other ancillary work performed by other trade sectors. In particular, access routes and the assembly or installation site must be levelled and cleared, the foundation masonry set and dry, wall and ceiling fully plastered in the case of indoor assembly, specifically, doors and windows must be fitted.

General Terms and Conditions of Sale bavius technologie gmbh

4. The Customer is required, in each case to the extent necessary, at its own cost to provide the following personnel and materials at the agreed time of assembly, installation and operation of the machine at the assembly and installation site:

- Auxiliary staff and, if necessary, metalworkers, crane operators, masons, carpenters and other specialist tradesmen, together with the requisite tools, in the necessary quantity and for the necessary time;
- Consumer goods and consumables required for the assembly, installation and operation of the machine, for example, documentation, wedges, spars, cement, plaster and sealing materials, lubricants, fuel, scaffolding, lifting equipment and other devices;
- Electricity and water, including the necessary connections up to the site of use, as well as heating and general lighting;
- Protective clothing and protective devices that are necessary as a result of particular circumstances at the site of the assembly and installation and are not customary within the Contractor's industry.

5. The Customer is required at the site of assembly and installation to provide the Contractor sufficiently large and appropriate space for the storage of machine parts equipment, materials, tools, etc. The Customer must provide appropriate work and common rooms, including sanitary facilities appropriate to the circumstances for the assembly workers assigned by the Contractor.

6. If the Contractor is required to perform 'start-up' (operation) of the machine and unless otherwise agreed in textform, the Customer must at no extra cost provide sufficient test material, drawings, programmes, digital data and similar, in each case to the extent necessary, for the initial start-up of the machine.

7. Following performance of the assembly, installation and any 'start-up' of the machine, the Customer is at the Contractor's request required to declare acceptance within a reasonable period. If this does not take place, acceptance is deemed to have taken place if the Customer did not refuse acceptance within the stated acceptance period, stating a more than insignificant defect. This also applies if the machine is used by the Customer for production purposes prior to expiry of the deadline for acceptance.

IX. Warranty

1. The Contractor's warranty obligation is restricted to the subsequent rectification of defects. Claims to compensation in place of performance (*Schadenersatz statt der Leistung*) are excluded. The Customer's right itself to take measures under a contract for work and services (*werkvertragliches Selbstvornahmerecht*) is also excluded.

2. In the event of the failure of rectification of defects, the Customer expressly reserves the right to demand a reduction (decrease) in the price or the rescission of the contract. For the purposes of the foregoing sentence, rectification of defects is deemed to have failed in particular if the subsequent rectification is impossible, if it is seriously and conclusively refused by the Contractor, if it is unreasonably delayed or if it is unreasonable for the Customer as a result of the accumulation of defects.

3. To the extent that expenses required for the purpose of subsequent rectification of defects increase due to the fact that the Customer has moved the purchased good to a place other than the place of performance (*Erfüllungsort*) after collection or delivery, the Customer shall bear the reasonable additional costs resulting therefrom for transport, travel, labour and material costs.

4. All warranty claims of the Customer become time-barred one year from the commencement of the statutory limitation period. This limitation period does not apply to intentional or grossly negligent caused damages, damages to life, limb and health and where mandatory limitation periods apply.

5. Machines is permitted to be operated only by staff previously trained by the Contractor in accordance with the provisions of the Contractor's machine documentation. The Contractor shall not assume any warranty for incorrect operation of the machines.

X. Liability

1. As a rule, the Contractor is liable only for compensation claims of the Customer based on damage to life, limb or health or based on the breach of material contractual obligations ("cardinal obligations", i.e. obligations that need to be fulfilled in order to facilitate the proper performance of the contract and which the Customer has a legitimate expectation will be fulfilled), as well as for other damages attributable to an intentional or grossly negligent breach of obligation by the Contractor, its legal representatives or agents (*Erfüllungsgehilfen*) and for damage for which it is liable under mandatory statutory provisions, e.g. under the German Product Liability Act (*ProdHaftG*).

General Terms and Conditions of Sale bavius technologie gmbh

2. In the case of the breach of cardinal obligations, the Contractor is liable only for the amount of foreseeable damage typical of this kind of contract if such damage was caused by simple negligence, unless the compensation claim of the Customer is based on damage to life, limb, health or on mandatory statutory provisions.

3. Unless the conditions set forth in Section X. 1. and 2. of the General Sales Conditions are met, the liability of the Contractor in cases of simple negligence:

- is excluded for indirect damages caused not to the performance object itself (e.g. loss of profits, indirect consequential losses, etc.);
- is limited for other damages to the coverage amount of the existing insurance held by the Contractor, which amounts to EUR 10 million, unless a lower liability amount is agreed in individual cases, in textform.

4. The Customer's compensation claims become time-barred one year from commencement of the statutory limitation period. This limitation period does not apply to intentional or grossly negligent caused damages, nor to damage to life, limb and health and insofar as mandatory statutory limitation periods apply.

XI. Machine Software

1. The software used to operate the machine (the "**Machine Software**") was developed in accordance with the technology available at the Contractor. The Machine Software is never claimed to be seamless meaning that it is not possible to guarantee unlimited functionality.

2. On delivery or collection of the machine, the Machine Software is of the cutting-edge standard of the Contractor at the time of the conclusion of the contract. The Customer informed itself of this and declares its consent upon conclusion of the contract.

3. Subject to the condition precedent pursuant to Section 158 (1) German Civil Code (*BGB*) of the complete fulfilment of all Secured Claims (Section VI. of the General Sales Conditions), the Contractor grants the Customer the non-exclusive right, unlimited as to location and time, to use the Machine Software within the scope of the contract and the contractual purpose (Section III. of the General Sales Conditions). Use of the Machine Software in more than one system is not permitted.

XII. Proprietary Rights

1. The Contractor without restriction reserves the ownership rights, industrial property rights and other intellectual property rights in quotes, drawings and other documents as well as intangible information; such information is permitted to be made available to third parties only with the Contractor's prior consent, such consent to be provided in textform.

2. If a contract is not concluded, any drawings and other documentation that form part of offers are to be returned without delay at the Contractor's request.

XIII. Maintenance Agreement

It is explicitly recommended that a maintenance agreement will be concluded for the machines and the Machine Software. The conclusion of a maintenance agreement is a prerequisite for service agreements with defined response times and agreements concerning machine availability.

XIV. Confidentiality

1. The Customer and the Contractor undertake to maintain confidentiality with regard to all non-evident commercial and technical details, in particular business or trading secrets, to which they become aware in the course of the mutual business dealings ("**Confidential Information**").

2. Confidential Information is permitted to be provided, disclosed or otherwise made available to third parties only if and insofar as the party affected provided its prior consent in textform thereto. The use, storage and dissemination of Confidential Information by the parties is permissible only insofar as this is necessary for due and proper performance of the contract. The parties will impose the obligations set forth in Section XIV. of the General Sales Conditions on all employees, representatives, commissioned third parties, advisers and legal successors.

General Terms and Conditions of Sale bavius technologie gmbh

3. The obligation to confidentiality and non-use pursuant to Section XIV. 1. and 2. of the General Sales Conditions (the "**Confidentiality Duty**") does not apply if the Confidential Information

- was demonstrably known to the other party prior to notification or provision thereof, or
- was demonstrably notified to or made available to the other party by an authorised third party, or
- was publicly available or generally known prior to the notification or provision, or
- becomes publicly available or generally known following notification or provision through no involvement or fault on the part of the other party in each case, or
- is required in order to obtain an official authorisation.

4. The Customer and the Contractor are under an obligation to return the Confidential Information following performance of the contract to the respective other party or, on request by the other party, to destroy the information, including furnishing evidence of the destruction.

5. Unless otherwise agreed by the parties in textform, the Confidentiality Duty shall also apply after the performance of the contractual relationship. It lapses if and insofar as the Confidential Information becomes generally known, without this involving any breach of the Confidentiality Duty.

XV. Applicable Law, Place of Jurisdiction, Severability Clause

1. Unless otherwise agreed in textform, the legal relationship between the Contractor and the Customer is exclusively governed by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (*C/ISG*) and the conflict of laws provisions.

2. Unless otherwise agreed in textform, the courts with the local jurisdiction for Baienfurt have exclusive jurisdiction for all contractual and related non-contractual disputes between the parties. The Contractor is also entitled to file suit at any other permissible legal venue.

3. Should any provision of these General Sales Conditions or a provision in other agreements between the parties not have become a component part of the contract, in whole or in part; or if such provision is or becomes invalid, unenforceable or void; or if these General Sales Conditions or other agreements between the parties prove to have an unintended omission, this shall not affect the validity of the remainder of the provisions of these General Sales Conditions or other agreements. The provision that did not become a component part of the agreement, that is invalid, unenforceable or void is deemed replaced with the valid and enforceable provision that the parties would have agreed upon, had they considered the matter from the outset, giving due consideration to the mutual commercial interests. The foregoing sentence applies mutatis mutandis in the event of any unintended omissions.