

# General Terms and Conditions



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## 1. General Provisions

For all legal transactions with BMC Messsysteme GmbH these Terms and Conditions apply exclusively. They also apply to dealers in respect of all future business transactions, without being explicitly agreed upon again. The validity of opposing Terms and Conditions – in particular those of the contracting party – and possible supposed agreement will not be accepted.

All agreements, as well as notifications and explanations by the customer regarding this contract, must be put down in this contract in written form. Place of performance is the corporate domicile. Place of jurisdiction for all direct and indirect disputes arising out of this contract is Munich, inasmuch as the customer is a fully empowered trader, or a legal entity under public law or a public special fund. In the event of dispute arising relating to this contract, the Law of the German Federal Republic is applicable exclusively. UN-Contract Law and International Private Law are excluded.

The key date for the observance of deadlines in respect of these Terms and Conditions is the receipt of the declaration at BMC Messsysteme GmbH.

## 2. Quotation and Conclusion of Contract

Quotations by BMC Messsysteme GmbH are subject to change without notice and are non-binding. Declarations of acceptance and all orders require the confirmation by BMC Messsysteme GmbH in writing or by telex in order to become legally effective. Drawings, diagrams, dimensional and other data, as well as specifications in leaflets and brochures are non-binding, unless otherwise explicitly agreed in writing.

## 3. Indemnity Clause / Legal Binding

The offers, written and oral information, quotations and statements in brochures etc. of BMC Messsysteme GmbH are non-binding and without obligation. They only become legally binding by written confirmation.

## 4. Pricing

The prices named upon conclusion of contract are valid.

In addition to the agreed prices, costs for transport, packing, spare parts, and, in the case of repair and development services, the time costs are charged. The prices quoted are trade prices and do not include the statutory value added tax.

## 5. Costs / Transport / Passage of Risk

In the event of repair or made-to-order works – cases of warranty excepted – the costs for work and travel hours, mileage allowance, expenses, spare parts and necessary material will be charged. Transportation costs will be borne by the customer.

Risk passes to the customer, as soon as the consignment has left the premises of BMC Messsysteme GmbH. In the case of default in taking delivery or delay of delivery by request of the customer, the risk passes to the customer upon notification of availability. Transportation by BMC Messsysteme GmbH or one of the assistants or vicarious agents is only effected on request and at the customer's own risk.

## 6. Offset

An offset by the customer is only accepted, if it is notified in writing one month in advance, if it refers to indisputable or legally effective claims, and the counterclaim is substantiated. The declaration of an offset must be in written form and must name claim and counter claim in detail.

## 7. Right of Retention

The customer's right of retention can only apply in the case of a claim referring to the same contractual relation.

## 8. Non-Assignment Clause

The customer is not entitled to assign claims, which may exist against BMC Messsysteme GmbH.

## 9. Warranty

### a) General:

In the case of non-observance of the operation-and maintenance instructions issued by BMC Messsysteme GmbH, changes being made to the subject matter of a contract, replacing of parts, or use of expendable and auxiliary material which do not comply with the original specification, any warranty becomes void. The same applies in the case of inappropriate operation, handling, inappropriate or neglected maintenance, non-observance of installation conditions, transport damage and /or damaging influences arising from the customer's environment. This limitation does not apply if the customer provides the proof that the defect didn't arise from the above mentioned.

Distinct guarantees and guarantees concerning the nature and life of products apply only when granted by us by means of a separate agreement.

### b) Performance:

The contractor will carry out the works required to repair defects by means of repair or replacement, as he sees fit. If the contractor seriously and finally refuses to fulfill his obligation, if he refuses to remedy or rectify the defect because of disproportional costs, the rectification is not successful or is unreasonable for the customer, the customer can at his own choice only demand abatement of the compensation (reduction) or cancellation of the contract (repudiation) and claim damages within the limitation of liability (number 2) instead of performance. In the case of a minor breach of contract, in particular minor defects, the customer does not have the right to withdraw. If the contractor is not responsible for the breach of obligation arising from a defect, the customer does not have the right to withdraw. Rights of the customer relating to defects, which do not relate to construction work or work existing in the rendering of planning and supervision performances, become statute-barred within one year from acceptance of the work / object subject to repair. The short period of limitation is not applicable, if the contractor can be charged with gross negligence or having caused damage to health and body of the customer or if the customer has lost his life. Liability of the contractor according to the product liability law also is not affected. In the case of fraudulent concealment of defects or assumption of a guaranty further claims are not affected.

### c) Purchase:

We guarantee for defects of the goods and have the right to remove defects by rectification of the defect or replacement. If the work is carried out at another location set by the customer, and BMC Messsysteme GmbH agrees, all expenses such as additional working hours and travel costs must be paid in accordance with the usual rates of BMC Messsysteme GmbH.

If the attempt to rectify is unsuccessful, the customer has the right to demand reduction of purchase price or cancellation of contract. In the case of a minor breach of contract, in particular minor defects, the customer does not have the right to withdraw.

Apparent defects must be notified in writing within two weeks from receipt of the goods. Otherwise the assertion of warranty claims is excluded. The deadline is considered met if dispatch occurs within this period. The customer fully carries the burden of proof for all requirements for claims, in particular for the defect itself, for the time of detection of the defect and for the notice of defects in due time.

If the customer chooses to withdraw from the contract in the case of a legal defect or a defect of quality after an unsuccessful attempt to rectify, he is not entitled to a claim for damages because of the defect.

If the customer chooses compensation for damages after unsuccessful rectification, the goods remain with the customer, if reasonable. The compensation for damages is limited to the difference between the purchase price and the value of the defective object. This does not apply, if we fraudulently caused the breach of contract.

The warranty period is two years from delivery of the goods. The warranty is excluded if the customer has failed to notify an apparent defect in due time.

As for the quality of the goods only the product description applies. Public statements, extolling, or advertisement do not represent a contractual specification of the quality of the goods.

If the customer receives a defective product description, we are only obliged to supply a defect-free product description if the defective product description prevents the orderly installation.

## 10. The customer's duty to cooperate

The customer is obliged to notify all circumstances essential for the performance of a contract immediately and in writing, and to supply BMC Messsysteme GmbH with the required information and agreed human and physical resources. Upon conclusion of contract, the customers will designate a responsible and fully authorized contact person (project manager). In the case of violation of this agreement, BMC Messsysteme GmbH is entitled to claim damages resulting therefrom (e.g. lost profits, wasted working hours, storage costs).

In the case of assertion of warranty claims, the customer is obliged to document the faults / defects or defective performance and to submit this document in written form.

Hard- and software must only be used in the recommended configuration and for the intended use as stipulated by BMC Messsysteme GmbH. In the case of violation of this agreement, any warranty claims and claims for damages are negated, except in the case of intention or gross negligence on the part of BMC Messsysteme GmbH.

### 11. Limitation of liability / Limitation of damages

In the case of slight negligence, our liability is limited to the direct, typical damage foreseeable as arising from this form of contract. This also applies for slight negligence by our legal representatives or vicarious agents.

In the case of entrepreneurs we are not liable for slight negligence of insignificant contractual obligations.

The above-mentioned limitations of liability do not affect claims of the customer arising from product liability. Also the limitations of liability do not apply if we have caused damage to health and body of the customer or if the customer has lost his life. In the case of resale of products produced by BMC Messsysteme GmbH to third parties, with or without them having been processed by the customer, and unless otherwise explicitly agreed in writing, the customer releases BMC Messsysteme GmbH from liability for possible claims for damages, in particular those from product liability. BMC Messsysteme GmbH is liable within the scope of the above-mentioned Limitations of Liability, but not beyond the predictable damage; in the case of the sale of a device, up to an amount three times as high as the agreed sum for performance.

### 12. Delay of Acceptance / Terms of Payment / Maturity

In the case of delay in taking delivery initiated by the customer, BMC Messsysteme GmbH is entitled to withdraw from the contract or to claim for damages for non-performance after having fixed a grace period of 14 days which has expired fruitlessly. Alternatively, BMC Messsysteme GmbH has the right - after having fixed an appropriate period and its fruitless expiration - to make use of the subject matter of contract otherwise and deliver or perform again within an appropriate term. The actual amount of the storage costs arising from the default in taking delivery will be charged in at least the amount of 1.0% of the contract sum for every month or part of month of storage.

In the case of failure to meet agreed deadlines, BMC Messsysteme GmbH will only be in default after the customer has sent a reminder in written form, which includes a deadline and describes the due performance in detail. Nonetheless, default on performance does not occur if the delay results from force majeure or reasons beyond the sphere of influence of BMC Messsysteme GmbH. This in particular applies for delays incurred by contract partners of BMC Messsysteme GmbH. In this case, the period for performance in due course extends by the elapsed period of the delay.

Payment by the customer is due within 14 days from date of invoice, unless otherwise indicated on the invoice. They are regarded as effected when paid by irrevocable credit to one of the bank accounts of BMC Messsysteme GmbH. If payment is not effected on time, a default interest of 4% above the applicable discount rate of the Bundesbank (Federal Bank) falls due. All expenses and fees shall be paid by the customer. In the case of delivery to foreign countries, export-related costs such as customs duty and taxes are at the expense of the buyer.

BMC Messsysteme GmbH shall be entitled to retrieve the delivery or service if the customer is in arrears with other payment obligations at a total amount of at least EUR 10,000.-. The delivery or service only becomes due when these debts have been settled completely.

### 13. Collateral

Until the fulfillment of all accounts receivable (including all requests for balances from current account), which BMC Messsysteme GmbH is entitled to claim from the customer on any legal basis now or in the future, BMC Messsysteme GmbH is granted the following collateral, which BMC Messsysteme GmbH will release on their expressed request, provided the value of the collateral sustainably exceeds the accounts receivable by more than 20%.

The goods remain property of BMC Messsysteme GmbH. Processing and reorganization is always effected for BMC Messsysteme GmbH as the manufacturer, but without obligation. If (co-) ownership of BMC Messsysteme GmbH terminates through nexus, it is now agreed that the (co-) ownership of the customer of the common concern passes on to BMC Messsysteme GmbH, its value being prorated according to acquisition and manufacturing costs. The customer retains custody of the (co-) ownership of the seller free of charge. Goods, which BMC Messsysteme GmbH is entitled to co-own, are denoted as conditional commodity in the following. The seller has the right to process and sell the conditional commodity within ordinary course of business, as long as he/she is not in default. Pledging and assignment as security is illegal. The customer agrees hereby to the assignment as of now, of any claims arising from resale or other legal foundation (insurance, tort) in regard of the conditional commodity (including all requests for balances from current account) in full to BMC Messsysteme GmbH, who hereby accepts the assignment. BMC Messsysteme GmbH irrevocably empowers the customer to collect the claims assigned to BMC Messsysteme GmbH for its account in his/her own name. This direct debit authorization can only be revoked, if the buyer fails to meet his obligation to pay. If a third party takes action in regard of the conditional commodity, particularly in the event of impounding, the customer will refer to the property of, and inform BMC Messsysteme GmbH immediately, so that BMC Messsysteme GmbH can enforce its rights. If the third party is not in the position to reimburse BMC Messsysteme GmbH for the court costs arising in this respect, the customer is liable for this. If the customer acts in contrary to the agreement, particularly in the event of delay in payment, BMC Messsysteme GmbH has the right to withdraw the conditional commodity or to demand the assignment of restitution claims of the customer against a third party. Withdrawal and pledging of the conditional commodity does not imply withdrawal from contract.

In the event of development and other service cost of more than EUR 5,000.- the customer is obliged - on request and at the option of BMC Messsysteme GmbH - to furnish a security corresponding with the value of the partial performance already supplied, by pledging, assignment as security, absolute guarantee on first request or by other means.

#### **14. Data Protection**

The customer hereby agrees with the storage of customer-related data by BMC Messsysteme GmbH, according to §33 BDSG (Federal Data Protection Law). Unless otherwise agreed in writing, the data which becomes known by BMC Messsysteme GmbH arising from order processing are not considered confidential. BMC Messsysteme GmbH can use such data in accordance with the data protection regulations and the copyright law. BMC Messsysteme GmbH is not responsible for the loss of data, unless the storage has been explicitly made the subject matter of the order in writing.

#### **15. Duty to inspect incoming material and to notify defects / Acceptance**

The customer is obliged to inspect the delivery or other performance immediately after acceptance. Apparent defects must be notified in writing and in detail within two weeks at the latest. Other defects must be notified in the same manner within two weeks after knowledge at the latest.

The customer is committed to immediate acceptance of the work. Partial acceptance is possible in the case of separately identifiable units. The acceptance is effected through inspection of the supplied service or performance and confirmation of adequacy. If the customer does not provide the requested acceptance, the acceptance is regarded as effected 14 days after reception of request. The request must provide for a time period of 14 days to allow for the written statement of the reasons to be provided, and point out the consequences of his behavior.

#### **16. Copyright / Brands**

The customer receives the exclusive and non-transferable copyright for the delivered and developed software and relating know-how for the purpose agreed in contract. All further rights, such as reproduction and dissemination etc. are not transferred. All copyrights for the software including deriving programs or parts of programs as well as the related documentation remain property BMC Messsysteme GmbH. In the event of breach of these rights, in particular the unauthorized resale or transfer for use, BMC Messsysteme GmbH can claim a contract penalty to be paid by the customer, to the amount of three times the value of the agreed compensation, but at least EUR 10,000.-. Furthermore the assertion of a claim relating to the actual damages arising is possible.

In the event of development orders and unless otherwise agreed in writing, the customer only acquires the rights for usage on the hardware devices which are delivered.

In the event of software development and unless otherwise agreed in writing, the customer only acquires the copyright for a single license at one location.

Unless otherwise agreed, the customer is not entitled to pass the submitted documents on to a third party, to use them for further development, or to produce or have produced devices based on these documents.

#### **17. WEEE Directive**

Since November 24th, 2005 only manufacturers, importers and distributors registered at the "ear"-foundation are permitted to put electric appliances into circulation in Germany. Bmcm is registered at the ear as b2b manufacturer. Therefore, since March 23rd, 2006 bmcm products must not be disposed in the domestic waste or at any public waste collection places anymore. At his own expense the customer shall either dispose the bmcm product according to the regulations by law or return it to bmcm upon the end of use.

#### **18. Regulations for Products according to Performance Standards by the Customer**

Products according to performance standards by the customer are developed on the basis of a functional and performance specification, which is to be prepared and submitted by the customer. Regarding these products a purchase agreement becomes effective without other stipulations after a quote was submitted by BMC Messsysteme GmbH and the customer has placed his order.

Until delivery of the products concrete definitions or changes concerning the technical data are possible. BMC Messsysteme GmbH generates data sheets during the development process, containing the specific technical data. If the changes represent a technically equivalent solution compared to the functional and performance specifications, the customer hereby declares his prior consent. Furthermore, BMC Messsysteme GmbH is entitled not to comply with the requirements of the functional and performance specifications, if an adequate technical solution is only possible with a non-reasonable effort or if the technical equipment therefor required is not to be found on the market. However, this does not apply to those requirements, defined by the customer as obligatory within the scope of a concluded contract. In this case BMC Messsysteme GmbH is entitled to withdraw from the contract without any further liabilities in terms of benefits or compensation.

Further performances, exceeding the requirements of the performance specifications must be requested by the customer separately. BMC Messsysteme GmbH shall charge them separately according to the current price list or the usual billing rates for engineering services. Unless otherwise agreed in writing, support for start-up and installation is not subject matter of scope of performance.

#### **19. Severability Clause**

The invalidity of one individual provision does not affect the validity of the others and those of the concluded contract. In the event of invalidity an arrangement shall be found, which comes as close as possible to the purpose of this agreement.