

This English translation of the General Sales Terms and Delivery Conditions of the Bell Equipment (Deutschland) GmbH is provided solely for the convenience of customers. The translation is not binding on Bell Equipment (Deutschland) GmbH. The German text is the sole authoritative and binding version and prevails in case of any conflict.

## General Sales Terms and Delivery Conditions of Bell Equipment (Deutschland) GmbH

### 1. Exclusive applicability of these GTC towards commercial parties, public law entities and special public law estates and general

- 1.1. These general sales terms and delivery conditions (hereinafter referred to as: GTC) shall apply exclusively towards commercial parties, public law entities and special public law estates upon conclusion of a contract in the exercise of a commercial or independent professional activity.
- 1.2. Our GTC apply towards such purchasers without any exception for all of our offers, agreements and deliveries.
- 1.3. The general terms and conditions of the purchaser are not binding on us even if we have not again objected to them after receiving them. That means that in case of a conflict between our GTC and the general terms and conditions of the purchaser, our GTC shall apply exclusively. For this reason, such additional or supplemental provisions contained in the general terms and conditions of the purchaser that are absent in these GTC do not become subject of the contract.

### 2. Conclusion of contracts and prices

- 2.1. Our offers remain subject to change, whereas our proprietary right and copyright and/or those of our suppliers with respect to offers, drawings and other documentation (regardless of whether in physical or intangible, particularly electronic form) persist. They may not be made accessible to third parties and must be immediately returned to us on demand.
- 2.2. Images in our prospectuses, advertisements, in our internet presentation or the like are non-binding.
- 2.3. The purchaser is committed to his order for two weeks. This period begins with our receipt of the order. All agreements, in particular all contractual subsidiary agreements and subsequent changes to the contract require a written agreement in order to be effective. This also applies to amendments and/or supplements to our GTC. Representations and warranties must be made in writing.
- 2.4. As far as reasonable for the purchaser, partial deliveries are permitted.
- 2.5. Our prices are understood strictly net ex our stock or the manufacturing plant. The legal value-added tax, packing, loading and shipment costs as well as the costs for the set-up and commissioning of the delivery item, therefore, are calculated additionally.
- 2.6. Deviations from our measurement, weight and performance data that are minor, customary or caused by technical improvements are permissible.
- 2.7. Warranties are only accepted by us upon special agreement. Such an agreement requires the written form for its validity. A reference to DIN standards only serves for the description of the object of performance and therefore does not represent a guaranty.

### 3. Terms of payment

- 3.1. Payments – in each case without withholding – must take place for vehicle deliveries immediately after delivery and billing and for replacement partial deliveries within 30 days after delivery and billing. Cash discounts are only granted if they are assured by us in writing.
- 3.2. We are entitled to perform outstanding deliveries and services only against payment in advance or security deposit if we acquire knowledge after conclusion of the contract that our payment claim is endangered by the purchaser's inability to pay.
- 3.3. Payment instructions, checks and bills of exchange are only accepted upon special agreement and – with calculation of all collection and discount charges - only in fulfilment but not instead of fulfilment.
- 3.4. Default interests are calculated in accordance with § 288 para. 2 BGB (German Civil Code) at 9 percentage points above the basic rate of interest.

### 4. Offsetting and right of retention

- 4.1. The purchaser can only offset against our claims with counterclaims that are undisputed or legally binding.
- 4.2. The purchaser cannot invoke a right of retention that is not based on the same contractual relationship.

### 5. Delivery and delay in delivery

- 5.1. Delivery dates and periods of delivery, which can be bindingly and non-bindingly agreed upon, are to be indicated in writing.
- 5.2. Periods of delivery begin with the conclusion of contract, however not before clarification with the purchaser of all technical and commercial details.
- 5.3. In the case of agreement of a non-binding delivery date or a non-binding period of delivery, we can be declared in default by warning notice (cf. § 286 para. 1 BGB) 4 weeks after expiry of the delivery date and/or the period of delivery.
- 5.4. In cases of force majeure, particularly in cases of labour disputes, occurrence of unforeseeable obstacles lying beyond our area of influence as well as obstacles for which the manufacturing plant is responsible, the delivery date or the period of delivery is extended for the duration of the delay in delivery caused by these circumstances. This applies accordingly if the obstacles arise during an already existing delay in delivery.
- 5.5. The purchaser's claim for damages due to delay in performance (§ 280 para. 1, para. 2 in connection with § 286 BGB) in case of ordinary negligence is limited at most to 5% of the agreed-upon (net) purchase price.
- 5.6. All further claims for damages of the purchaser due to delay in delivery in case of ordinary negligence are excluded. The purchaser, in particular, cannot claim for damages in lieu of performance (§ 280 para. 1, para. 3 BGB in connection with § 281 BGB) due to delay in delivery in case of ordinary negligence.

### 6. Transfer of risk as well as shipment and acceptance of the delivery item

- 6.1. The delivery item is only insured by us against transport damages at the expressed request of the purchaser and at his expense.
- 6.2. We are not committed to choose the least expensive mode of shipment. Claims for damages of the purchaser due to incorrect shipment or defective packing are excluded in case of ordinary negligence.
- 6.3. The purchaser must, irrespective of his rights pursuant to No. 10 of these GTC, accept delivered items, even if they show insignificant defects.

### 7. Acceptance

- 7.1. The purchaser has to accept the delivery item at our place of business within 8 days of the written notification by us of the date of deployment. In the case of non-acceptance we can make use of our legal rights.
- 7.2. If the purchaser demands damages instead of delivery, it amounts to 10% of the agreed-upon (net) purchase price. The amount of damages is to be adjusted higher or lower if the purchaser provides proof of higher damages or we provide proof of lower damages.

### 8. Reservation of title, realisation and release of securities

- 8.1. We remain title in the delivery item until payment in full of the purchase price as well as the legal value-added tax.  
The reservation of title also persists for all of our other claims arising under the sales contract.  
The reservation of title also extends to all of our other claims arising under the business relationship with the purchaser. With respect to an current account, the reserved title applies as security for our claims.
- 8.2. If the delivery item under reservation of title is processed together with objects in the sole ownership of the purchaser or combined with them and our ownership of the goods subject to reservation of title ceases as a result of this (§§ 947, 948 BGB), it is agreed that new ownership, if any, is already transferred to us to secure our still open claims at the time of its creation and the item is to be kept in custody for us by the purchaser free of charge and without right to return. If the delivery item under reservation of title is processed together with other objects subject to reservation of title or security by transfer of ownership of third parties or combined with them and our ownership of the goods subject to reservation of title ceases as a result of this (§§ 947, 948 BGB), it is agreed that we become co-owner of the new item arising from the processing or combination proportional to the value of our goods subject to retention of title to the value of the goods subject to reservation of title or security by transfer of ownership of third parties.
- 8.3. So long as our reservation of title of the delivery item exists, we are exclusively entitled to possession of the vehicle documents.
- 8.4. The purchaser must insure the goods subject to reservation of title against theft, machinery breakdown, water and fire damages at his own expense, provided that we are entitled to the rights from the insurance policies.
- 8.5. As long as our reservation of title exists, a sale, pledge, transfer by way of security, lease or other transfer or alteration of the delivery item affecting our security is only permitted with our prior written consent. The purchaser is, however, – contrary to No. 8.5 sentence 1 of these GTC

– entitled to resell the delivery item in our ownership in the ordinary course of business. However, he already now assigns to us all claims (including legal value-added tax) towards his buyer or third parties arising from the sale of a delivery item in our ownership. This also applies proportionally in the amount of the value of our co-ownership if the delivery item is processed into other objects or combined with them. However, the purchaser remains entitled – up until revocation – to the collection of the aforementioned claims assigned to us in the course of ordinary business.

Our power of collection of the claims assigned to us remains unaffected thereof. We are committed to not collect the claims assigned to us as long as the purchaser is not in default with payments due on the claims secured by his aforementioned assignment of claims and no petition has been filed for the opening of insolvency proceedings over his assets. In case of default of payment, we will threaten the purchaser in writing with the collection of the claims he has assigned to us with a time limit of 2 weeks. As soon as we are entitled to collect the claims assigned to us, the purchaser has to provide us with all necessary documentation and information for the enforcement of the claims and, in particular, give us the complete names and addresses of the debtors of the claims that he has assigned to us.

- 8.6. In case of third party-access, in particular seizures of the items fully or partially in our ownership, the purchaser must immediately notify us in writing and promptly inform the third party of our reservation of title. The purchaser must bear the costs of a third party action against enforcement as well as all other costs that are necessary for the suspension of the third party-access and for the recovery of our goods.
- 8.7. The purchaser must keep the delivery item in proper condition for the duration of the reservation of title and have all maintenance work that is designated by the manufacturer and necessary repairs – with the exception of emergencies – carried out immediately either by us or a workshop approved by the manufacturer for the care of the delivery item.
- 8.8. We are committed, on demand, to the release of securities of our choice, insofar as the value of all our securities which can be realised does not only in the short term exceed 110% of the total amount of all our claims. We will consider the legitimate interests of the purchaser with the selection of the securities to be released by us.

## **9. Duty of the purchaser to inspect the goods and give notice of defects**

- 9.1. The purchaser must inspect the delivery item immediately after its receipt, insofar as this is feasible in the ordinary course of business, and, if a defect appears, to immediately notify us of this in writing. If the purchaser fails to inform us in writing, the delivery item is deemed to be accepted, unless it involves a defect that was not recognisable during the inspection.
- 9.2. If the delivery item exhibits a defect at a later time, the purchaser must notify us of this defect in writing immediately after its discovery; otherwise the delivery item is deemed to be accepted also in consideration of this defect.

## **10. Material Defects**

- 10.1. In case of the sale of used delivery items any liability for material defects, and thus any guarantee, is excluded. This does not apply in case of gross negligence or injury to the life, body or health. No. 10.1 sentence 1 of these GTC does also not apply either, if we have fraudulently concealed a defect or have assumed a warranty for the condition of the delivery item.
- 10.2. In case of the sale of new delivery items the following applies:
- 10.2.1. The claims of the purchaser on the basis of a material defect of the delivery item – regardless of the legal reason – are time-barred to 12 months starting from its delivery. This does not apply in case of gross negligence or injury to the life, body or health. No. 10.2.1 sentence 1 of these GTC does also not apply either, if we have fraudulently concealed a defect or have assumed a warranty for the condition of the delivery item as well as in case of claims according to the German Product Liability Act (Produkthaftungsgesetz).
- 10.2.2. The claims of the purchaser on the basis of a material defect already existing at the time of the transfer of risk are – insofar as we do not have fraudulently concealed a defect or have assumed a warranty for the condition of the delivery item – limited to cure in the form of remedy of defects or the delivery of a delivery item free of defects, according to our choice. In case of failure of the form of cure chosen by us (remedy of defects or delivery of an item free of defects), the purchaser is entitled to the reduction of the purchase price of the delivery item or to rescission of contract, according to his choice.
- 10.3. No guarantee is assumed for natural wear, use in extraordinary conditions, incorrect or careless handling as well as the misappropriated use of the delivery item. This applies in particular, if the purchaser uses incorrect operating materials or does not observe the maintenance intervals prescribed by the manufacturing plant.
- 10.4. The purchaser is barred from claims on the basis of material defects if – with the exception of emergencies – a repair, alteration or replacement of individual parts on the delivery item is carried out by persons not expressly authorised by us for this purpose. The costs arising through such measures – leading to the loss of claims based on material defects – must be borne by the purchaser.

## **11. Liability**

- 11.1. For damages sustained by the purchaser not arising on the delivery item itself, which are caused by a material defect of the delivery item, we are only liable

- in case of gross negligence,
- in case of injury to the life, body or the health,
- in case of the culpable breach of contractual duties jeopardising the fulfilment of the purpose of the contract with respect to the foreseeable, typical damages at the time of the conclusion of contract,
- in cases of liability according to the German Product Liability Act (Produkthaftungsgesetz) for defects on the delivery item with respect to personal injuries or material damages to privately used objects,
- in case of the absence of expressly warranted characteristics of the delivery item, if the warranty serves the specific purpose of protecting the purchaser against damages not arising on the delivery item itself, and
- in case of fraudulent concealment of defects or the assumption of a warranty for the condition of the delivery item.

Apart from that, our liability is excluded.

- 11.2. For damages sustained by the purchaser not caused by a material defect of the delivery item and not occurred to the delivery item itself, No. 11.1 of these GTC applies accordingly.
- 11.3. Our liability for damages sustained by the purchaser caused by delay in delivery is conclusively regulated in No. 5 of these GTC. No. 11.1 and No. 11.2 of these GTC apply accordingly for claims of damages against our legal representatives as well as persons whom we use to perform obligation and vicarious agents.

## **12. Use of software**

- 12.1. Insofar as we deliver software with the delivery item, the purchaser is granted a non-exclusive right to the use of this software in the contractually agreed-upon extent. Use of the software outside the delivery item for which it is appointed and/or beyond the contractually agreed-upon extent is not permitted. No. 12.1 sentence 1 and sentence 2 of these GTC apply accordingly to any (software) documentation handed over by us to the purchaser along with the software.
- 12.2. All rights to the software delivered by us with the delivery item remain with us and/or our software suppliers. The granting of sublicenses is not permitted. No. 12.2 sentence 1 and sentence 2 of these GTC apply accordingly to any (software) documentation handed over by us to the purchaser along with the software.

## **13. General Data Protection**

- 13.1. Protecting clients' personal information is important to the Bell Equipment group and we are committed to ensuring the security and protection of the personal information processed by the organisation and to provide a compliant and consistent approach to data protection. In order to do so, we follow general principles in accordance with applicable privacy laws, specifically the General Data Protection Regulation ("GDPR"). In terms of chapter 3 of GDPR we need to make our Data Subjects aware of certain information and rights in terms of the GDPR. Please view our Bell Privacy Policy that is available online at <https://www.bellequipment.com/miningconstruction/de-DE/uber-uns/Datenschutzerklarung> so that you are fully aware of how and why we are using your Personal Information. Should you have any questions please contact your product/dealer manager.

**14. Place of fulfilment, place of jurisdiction, applicable law and severability clause**

14.1 These GTC shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.

14.2 Place of performance shall be our registered office in Alsfeld (Hessen). If the purchaser is a commercial party, a public law entity or a special public law estate, we can file complaints at our general place of jurisdiction and actions can only be filed against us in that venue. If the purchaser is located abroad, we shall be entitled at our choice to file complaints against the purchaser at the purchaser's registered seat abroad.

14.3 The invalidity of any provision of these GTC shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to achieve the economic purpose of the ceased provision to the greatest extent possible.