



## Terms and Conditions of Purchase of Baerlocher GmbH

### Section 1 Scope

- (1) Orders from Baerlocher GmbH are placed exclusively subject to the following General Terms and Conditions of Purchase (hereinafter referred to as “Terms of Purchase”). These Terms of Purchase of Baerlocher GmbH, properly incorporated, also apply to all future transactions with the Supplier. The Supplier acknowledges the validity of these Terms of Purchase as binding upon acceptance of an order or, at the latest, upon making delivery.
  
- (2) Baerlocher GmbH rejects any Supplier terms and conditions that conflict or are inconsistent with these Terms of Purchase. Such terms and conditions do not become part of the contract unless Baerlocher GmbH expressly consents to their application. Baerlocher GmbH gives any such consent in writing or in text form (such as by email). Under no circumstances does failure by Baerlocher GmbH to object to any reference to Supplier terms and conditions in Supplier documents constitute acceptance of Supplier terms and conditions. These Terms of Purchase of Baerlocher GmbH, properly incorporated, also apply if Baerlocher GmbH accepts delivery unconditionally in the knowledge that the Supplier’s general terms and conditions conflict or are inconsistent with the Terms of Purchase of Baerlocher GmbH.

### Section 2 Conclusion of contract

- (1) Offers are prepared by the Supplier free of charge. Baerlocher GmbH has the right to reject the Supplier’s offer at any time without stating reasons. Quotation requests from Baerlocher GmbH are non-binding and do not create any obligation for Baerlocher GmbH.
  
- (2) The Supplier can only accept an order from Baerlocher GmbH – which is sent to the Supplier in writing or in text form (such as by email) – within two weeks of receipt of the order. Compliance with this time limit is determined by receipt of the notice of acceptance at Baerlocher GmbH.



Until acceptance by the Supplier, Baerlocher GmbH has the right to cancel any order free of charge. Such cancellation is timely if made before receipt of acceptance.

- (3) The Supplier must expressly notify Baerlocher GmbH in the case that a quotation request/offer is accepted only with changes. In such cases, the contract is only concluded upon approval of the changes by Baerlocher GmbH.
- (4) If the Supplier has a technically or economically more favourable solution than that ordered by Baerlocher GmbH, the Supplier will offer that solution to Baerlocher GmbH in addition.
- (5) In the case of an agreement for specific works or services, the contractor or service provider undertakes to perform the works or services within its own operations. The subcontracting of works or services requires the prior consent of Baerlocher GmbH.

### **Section 3      Delivery dates and delivery periods**

- (1) The Supplier must comply with the agreed delivery period. The timeliness of performance is determined by receipt at the destination specified by Baerlocher GmbH.
- (2) If circumstances arise or become foreseeable that indicate that the agreed delivery time cannot be met, the Supplier must notify Baerlocher GmbH in writing without undue delay, stating the reason and the expected duration of the delay. Baerlocher GmbH is entitled to the statutory rights in the case of default. If the delay is expected to last more than two weeks and is attributable to the Supplier, Baerlocher GmbH has the right to terminate the contract with immediate effect. The assertion of further rights, including but not limited to the assertion of claims for damages, is expressly reserved.
- (3) The Supplier undertakes to request in good time the documents to be provided by Baerlocher GmbH for the execution of the order.



#### **Section 4 Shipping and transfer of risk**

- (1) Delivery must be made to the destination specified by Baerlocher GmbH during Baerlocher GmbH's normal hours for receiving deliveries.
- (2) Consignments must be accompanied by a delivery note, packing slip and all other documents required by law or agreed between the parties, such as credentials, certificates, etc. The order number and details of the unloading point, consignee and installation site must be given in full on all shipping documents and on the outer packaging.
- (3) Partial deliveries are only accepted if they have been announced in advance and Baerlocher GmbH has agreed to them in writing.
- (4) Unless otherwise agreed, the Supplier must arrange for shipment and select the most cost-effective and most suitable means of transport. At Baerlocher GmbH's request, the Supplier must take out suitable transport insurance at Baerlocher GmbH's expense.
- (5) Goods to be delivered (hereinafter referred to as "goods") must be delivered in packaged form if the nature of the goods requires packaging in transit. The packaging must be suitable for transport and comply with the carriage rules for the selected means of transportation and with all packaging requirements specified by law or in Baerlocher GmbH's order. Hazardous products must be packaged, labelled and shipped in accordance with the applicable national and international requirements. Any additional cost due to non-compliance with shipping or packaging requirements is borne by the Supplier.
- (6) The Supplier must send Baerlocher GmbH a dispatch note for each consignment on the day the goods are dispatched, irrespective of how they are sent. An invoice does not count as a dispatch note. For consignments sent by ship, the dispatch note must state the name of the shipping company and of the vessel.
- (7) Unless transported by Baerlocher GmbH's own vehicles or by a forwarding agent commissioned by Baerlocher GmbH, the goods are sent at the Supplier's risk up to the point of arrival at their destination. If a consignment arrives at its destination or is delivered to Baerlocher GmbH's driver or to the forwarding agent commissioned by Baerlocher GmbH in damaged packaging,



Baerlocher GmbH has the right to reject the consignment without further examination of its contents. The costs of any return shipment are borne by the Supplier.

## **Section 5      Prices, terms of payment**

- (1) The agreed prices are fixed prices net of value added tax (VAT) and include packaging, shipping, insurance if insurance is to be provided by the Supplier, import duties and other expenses.
- (2) VAT must be shown separately in quotations and invoices.
- (3) Invoices can only be processed if they are received by Baerlocher GmbH and contain all order data, the order or delivery number specified in the order and all information required by law, including the Supplier's VAT registration number. The details on the invoice must match the order with regard to the sequence of items, prices and item numbers. Baerlocher GmbH reserves the right to return to the Supplier any invoice that does not comply with these requirements, in particular with regard to order data and VAT requirements, and to demand that a proper invoice be issued. Invoices are to be sent in duplicate, with duplicates marked as such.
- (4) On request, the Supplier provides Baerlocher GmbH with an invoice in accordance with subsection (3), including invoice attachments, in electronic form.
- (5) Unless otherwise agreed in writing, Baerlocher GmbH makes payment within 14 days less 3% discount or within 30 days net. The payment periods run from the date of full delivery free of defects and receipt of a proper invoice in accordance with subsections (2) to (4) above.
- (6) Payment does not constitute acceptance of a delivery as being in accordance with the contract.
- (7) Baerlocher GmbH has the statutory rights of set-off and retention without restriction.



**Section 6      Quality, duty to communicate information, rights in respect of defects, duty to inspect**

- (1) The Supplier warrants that the goods have the contractually agreed characteristics, comply with the applicable legislation and recognised industry standards and are free from defects. The Supplier further warrants that the design and composition of the goods have not been changed from previous similar deliveries accepted as being free from defects unless such changes have been made with the consent of Baerlocher GmbH.
  
- (2) The Supplier warrants that its deliveries comply with the provisions of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as amended, and the German Prohibition of Chemicals Ordinance [Chemikalien-Verbotsverordnung].

The Supplier provides Baerlocher GmbH, without request, with the safety data sheets and the information required by the REACH Regulation (including but not limited to Article 33(1)) and by section 16f of the German Chemicals Act [Chemikaliengesetz].

- (3) The Supplier's warranty within the meaning of the above subsections also extends to parts, products and services purchased from subcontractors.
  
- (4) Baerlocher GmbH undertakes to inspect the goods without undue delay for any quality or quantity deviations. If a defect is discovered, a notice of defect must be issued within a reasonable period of time. A notice of defect is timely if it is received by the Supplier within five workdays from the receipt of the goods or, in the case of hidden defects, from their discovery.
  
- (5) Baerlocher GmbH has the statutory rights with regard to defects and the rights of recourse against the Supplier (sections 445a to 445c and 478 of the German Civil Code [Bürgerliches Gesetzbuch]), without restriction. In all circumstances, Baerlocher GmbH has the right, at its own option, to require the Supplier to eliminate the defect ("repair") or to deliver a new item ("replacement") (collectively referred to hereinafter as "cure"). If the Supplier is in default with the elimination of a defect, Baerlocher GmbH has the right to eliminate the defect itself at the Supplier's expense. No time limit has to be set if the cure by the Supplier is unsuccessful or untenable for Baerlocher GmbH (such as due to particular urgency, risk to operational safety or



imminent excessive loss or damage). Baerlocher GmbH notifies the Supplier in advance or without undue delay in the event that it eliminates a defect itself.

- (6) The Supplier bears all costs incurred in connection with the cure, including but not limited to replacement costs (disassembly, assembly, transportation, workshop costs, etc.) or costs incurred in connection with processing the goods.
- (7) The right to compensation, including but not limited to compensation in place of performance, the right to withdraw from the contract and the right to reimbursement of expenses are expressly reserved.
- (8) In the case of repair, the defective goods are made available to the Supplier, at the option of Baerlocher GmbH, either at the place where the defect was discovered or at the destination. The warranty period is suspended for the time taken to effect a cure.
- (9) The limitation period for rights in respect of defects is 24 months from the transfer of risk. The above warranty arrangements apply to parts for which a cure has been effected or which have been newly delivered, calculated from the time the defect is eliminated.

## **Section 7      Testing**

- (1) Baerlocher GmbH has the right to carry out testing at the manufacturing facility. The Supplier bears its own non-labour and labour costs in this connection; Baerlocher GmbH bears its own labour costs.
- (2) When tests are agreed, the Supplier gives notice of readiness for testing at least one week in advance and schedules a testing date with Baerlocher GmbH. If for reasons attributable to the Supplier the goods are not ready for testing, all costs incurred by Baerlocher GmbH in connection with the testing date are borne by the Supplier. If defects require repeated or additional testing, the Supplier bears all non-labour and labour costs.
- (3) The Supplier bears the non-labour and labour costs of material certificates for input materials.



- (4) Testing does not affect the Supplier's warranty.
- (5) Material and testing certificates are part of the scope of delivery and must be available at the time of delivery.

## **Section 8 Liability insurance**

- (1) The Supplier must take out and maintain sufficient liability insurance at its own expense for any loss or damage that may be caused by the delivered goods or by the Supplier, its legal representatives, senior employees or other agents in connection with the performance of the contract.
- (2) The sum insured per personal injury or property claim must be sufficient to cover all loss or damage characteristic of the type of contract and foreseeable as a possible consequence at the time of the conclusion of the contract. The liability insurance must be maintained for the duration of the contract – that is, until the limitation period for defects expires in each case. Proof of the amount of cover per insured event must be provided to Baerlocher GmbH on request. Taking out and presenting proof of the liability insurance does not limit the scope of statutory liability.

## **Section 9 Proof of origin, export control**

- (1) Unless otherwise confirmed in the confirmation of order, all orders relate to products that are originating goods within the meaning of European Community/European Union preferential agreements. The Supplier must provide Baerlocher GmbH with the required proof of preference at the latest upon delivery (long-term or individual supplier's declaration for products having preferential origin status; declaration of origin on invoice: origin declaration or origin declaration EUR-MED; movement certificate: EUR.1 or EUR-MED; certificate of origin Form A). The Supplier must also, on request, prove the preferential origin status within the above meaning by presenting INF 4 information sheets confirmed by the customs authority responsible for the Supplier. If the indications of origin in such proofs of origin are of a general nature, e.g., "European Union", the national origin (e.g., "Netherlands") must be indicated in addition.



- (2) If, during the validity period of a long-term supplier's declaration, the Supplier makes a delivery that deviates from its declaration, the Supplier undertakes, in addition to the indication on the invoice, to additionally notify the customs foreign trade department responsible for Baerlocher GmbH in the form of a written notice (double notification obligation). It should be noted that Baerlocher GmbH does not accept supplier's declarations containing an exclusion clause because they are not covered by the provisions of Regulation (EC) No 1207/2001. For this purpose, an exclusion clause is any addition to the prescribed wording of the supplier's declaration that restricts the declaration by making reference to later individual documents (delivery notes, invoices, etc.) and any indication that they may or may not contain.
- (3) The delivery of goods that are not originating goods within the meaning of European Community/European Union preferential agreements requires the prior written consent of Baerlocher GmbH.
- (4) In addition to the alternative obligations in accordance with section 9 (1) and (3), the Supplier must, for all goods, provide confirmation showing the non-preferential origin (a certificate of origin, a long-term or individual supplier's declaration without preferential origin status, or an addition to the declaration of origin on the invoice). If the indications of origin in such proofs of origin are of a general nature, e.g., "the European Community", the national origin (e.g., "Netherlands") must be indicated in addition.
- (5) All proofs of origin must be submitted without request, at the latest with the delivery and at the Supplier's own expense.
- (6) The Supplier undertakes to expressly inform Baerlocher GmbH upon receipt of the order, by separate written communication and in the relevant business papers, of any licensing, permit or approval requirements under the German Foreign Trade and Payments Act [Aussenwirtschaftsgesetz] (AWG), the German War Weapons Control Act [Kriegswaffenkontrollgesetz] (KrWaffKontrG) or the German Chemical Weapons Convention Implementation Act [Ausführungsgesetz zum Chemiewaffeneinkommen] (CWÜAG). Furthermore, the Supplier must indicate, stating the specific list item, if the goods are listed in the EU Dual Use Regulation together with its Annexes I to IV (see Regulation (EU) 2021/821 and the supplementary Commission Delegated Regulation (EU) 2022/1) or in Part 1 Sections A and





C of the Export List in the German Foreign Trade and Payments Ordinance [Außenwirtschaftsverordnung] (AWV). The Supplier must indicate whether the goods or parts thereof (stating the percentage value of the goods) fall under the United States Commerce Control List (CCL) (stating the specific Export Control Classification Number [ECCN]) or other United States Export Administration Regulations (EARs) (EAR99 classification). The relevant business papers include but are not limited to contracts of sale, confirmations of order, delivery notes, packing lists, pro forma invoices and dispatch notes.

- (7) If the goods are subject to a transfer of rights and obligations within the meaning of Article 218 of Regulation (EU) 952/2013 (the UCC), the Supplier transfers the rights and obligations to Baerlocher GmbH and submits corresponding documents in accordance with the UCC, such as the authorisation for end-use (if applicable with integrated transfer of rights and obligations (TORO) authorisation).

#### **Section 10 Product liability**

The Supplier is responsible, as prescribed by law, for the materials, individual parts of the goods and products supplied by the Supplier and to the same extent also for the end-product. The Supplier must indemnify Baerlocher GmbH on first demand against third-party claims for damages or other third-party claims in so far as the cause of the loss or damage lies within the Supplier's sphere of control and organisation and the Supplier itself is liable in relation to third parties. Baerlocher GmbH will notify the Supplier of any third-party claim and give the Supplier opportunity to comment on the claim. The Supplier must, to the best of its ability, support Baerlocher GmbH in the defence and provide the information required for this purpose.

#### **Section 11 Property rights and conformity with the law**

- (1) The Supplier guarantees that the delivered goods and the use of the delivered goods do not infringe any industrial property rights (such as trademark, patent or design rights) or other third-party rights (such as copyright or privacy rights) and also in all other respects are in conformity with the law (such as the German Act Against Unfair Competition [UWG], REACH [see section 6 (2) of these Terms of Purchase], etc.).



- (2) In the event of any third-party claim against Baerlocher GmbH for infringement of property rights or lack of conformity with the law within the meaning of subsection (1) above, the Supplier must, on first demand, indemnify Baerlocher GmbH from all claims of the third party. The required indemnification includes all costs and payment obligations necessarily incurred by Baerlocher GmbH from or in connection with the third-party claim. The limitation period for the right to indemnification is 36 months from the transfer of risk. Section 10 (3) and (4) of these Terms of Purchase apply with the necessary modifications.

## **Section 12 Weight**

The weight specified in Baerlocher GmbH's order must be adhered to with a tolerance of 5%. If in the case of purchase by specified weight the Supplier has not carried out an agreed official weighing, the Supplier will arrange an equivalent weighing at its own expense.

## **Section 13 Compliance and sustainability**

- (1) The Supplier's deliveries and services must comply with all applicable statutory and regulatory provisions. If the Supplier is subject to the German Supply Chain Due Diligence Act [Lieferkettensorgfaltspflichtengesetz] (LkSG), the Supplier undertakes in addition to strictly comply with that act.
- (2) The Supplier has sole responsibility for compliance with accident prevention regulations in connection with delivery. Any manufacturer's instructions must be made available to Baerlocher GmbH upon delivery.
- (3) The Supplier expressly recognises the Baerlocher GmbH Business Partner Policy as an integral part of the contract and undertakes to strictly comply with all requirements contained therein. The Supplier will endeavour to ensure that its own suppliers and subcontractors comply with the Baerlocher GmbH Business Partner Policy and will place them under obligation to do so. The current version of the Baerlocher GmbH Business Partner Policy is available for download at <https://www.baerlocher.com/downloads/#p487>.



- (4) Baerlocher GmbH reserves the right to evaluate, verify or audit compliance with the above requirements (by means of on-site or remote audits, online or paper questionnaires, certification systems, etc.). Evaluation, checking or auditing may be carried out by Baerlocher GmbH itself or by a qualified third party bound to confidentiality.

#### **Section 14 Advertising**

The Supplier may only make reference to the existence of the business relationship with the written consent of Baerlocher GmbH.

#### **Section 15 Incoterms**

If Baerlocher GmbH and the Supplier agree to the application of Incoterms, the agreement to Incoterms relates to Incoterms 2020.

#### **Section 16 Documents, confidentiality**

- (1) The Supplier must provide Baerlocher GmbH with the requested plans, calculations, etc., together with the documents required by law, such as credentials, certificates etc., in due time and provide any requested number of revised documents free of charge.
- (2) Baerlocher GmbH reserves all rights to all documents (including, but not limited to, calculations, technical records, etc.) and samples provided to the Supplier in the course of contract negotiations and conclusion of the contract, irrespective of whether the contract is actually concluded. This also applies to documents created by the Supplier on the basis of specific information or specifications from Baerlocher GmbH. The Supplier may not use, reproduce or make available to third parties any such documents or samples for purposes outside the contractual relationship with Baerlocher GmbH. They must be surrendered together with all copies and/or reproductions at Baerlocher GmbH's request. If no contract is concluded, the Supplier must, without undue delay and without request, return all documents to Baerlocher GmbH.
- (3) The Supplier must treat all requests for quotations, orders, deliveries or services as trade secrets and keep them confidential.



### **Section 17 Data protection, consent, indemnity**

- (1) Baerlocher GmbH attaches great importance to compliance with data protection laws, such as the German Federal Data Protection Act [Bundesdatenschutzgesetz] (BDSG) and the General Data Protection Regulation (GDPR). The Supplier is aware that personal data must also be collected and stored by employees or agents of the Supplier for the purpose of negotiating and concluding contracts and their performance. The Supplier warrants that it is authorised to process the personal data of its deployed employees, freelancers or other agents (including, but not limited to, surname, first name, role in the company and, if applicable, phone number and email address) for the purpose of contract negotiations, contract conclusion, contract performance and communication in the context of the business relationship with Baerlocher GmbH and, in particular, that it is authorised to share such data with Baerlocher GmbH. The Supplier will notify Baerlocher GmbH without undue delay in the event of termination of the contract of an employee or agent or permanent internal transfer of an employee or agent to another role. Baerlocher GmbH will then modify or, in the case of termination, delete or pseudonymise the personal data of the data subject concerned straight away, unless this conflicts with statutory data retention obligations.
  
- (2) If third parties or authorities assert any claim against Baerlocher GmbH because the Supplier has culpably violated the provisions of the third to fifth sentences of section 17 (1), the Supplier will indemnify Baerlocher GmbH on first demand against all claims for damages, other claims, costs (including legal fees) or fines resulting from the violation. Baerlocher GmbH will notify the Supplier of any claim without undue delay and give it the opportunity to comment. The Supplier will support Baerlocher GmbH in the defence against the claims and will provide Baerlocher GmbH with all information and documents required for this purpose without undue delay. This does not prejudice Baerlocher GmbH's right to assert further claims.

### **Section 18 Final provisions**

- (1) Subject to individual agreed terms within the meaning of section 305b of the German Civil Code, amendments and additions to the contract and/or to these Terms of Purchase, and any ancillary agreement, must be made in writing or in text form (such as email).



- (2) Should any provision of the contract and/or these Terms of Purchase be or become invalid or unenforceable in whole or in part, this does not affect the validity of the remaining provisions. Instead, the parties undertake to arrange for the invalid or unenforceable provision to be replaced with a valid or enforceable provision that comes as close as possible to the economic effect of the invalid or unenforceable provision. The same applies with regard to remedying any omission in the contract and/or these Terms of Purchase.
- (3) The exclusive place of jurisdiction and performance for all disputes arising from the contractual relationship is the City of Munich (München-Stadt). However, Baerlocher GmbH has the right to sue the Supplier at the latter's general place of jurisdiction.
- (4) The contractual relationship is subject to the law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and of German Private International Law is excluded.