

§ 1 scope of application

1. Offers, deliveries and services form CBHe are performed exclusively on the basis of the following general provisions (Business Terms) for the sale or manufacture of goods or the rendering of other services (including assembly, assembly monitoring, etc) in relation to entrepreneurs and/or companies within the meaning of § 310, para 1 of the Civil Code. The "Assembly Terms" (AS, see infra) apply supplementally to assembly assignments. The BT and eventually the AT also apply to all future business even if they are not once again agreed specifically. They additionally apply if counter-confirmations are made by the contract interlocutor with reference to the latter's own business or purchasing terms. Any such counter-confirmations are expressly objected to in advance.
2. Deviations from these Business Terms only have legal effect if they are agreed in writing, but at least have been confirmed by us.
3. Additionally equated with component parts of the contract are these Business Terms as well as the Assembly Terms and for agreements with non-German clients the applicable (actual) version of the ORGALIME terms.

§ 2 Offer and/or contract signing

1. Invitations to treat (invitation ad offerendum) are, in particular in brochures, advertisements, etc, free and non-binding. This furthermore applies to price information, drawings, illustrations, dimensions, weights and other performance data. The latter are only binding if they have previously been expressly agreed in writing and are the basis of a legally binding intention (CBHe). CBHe reserves the right to make modifications in the course of technical progress with the same or improved performance. The client is irrevocably bound by its order for four weeks. The acceptance deadline is likewise at least four weeks after receipt of the order. Any intention declared by CBHe must be confirmed by a written commitment or confirmation. In any case the client may only invoke contents of the contract after prior written confirmation by CBHe. Ancillary understandings and supplements only become a component part of the contract or the subject of an independent agreement upon our written confirmation. Agreements, ancillary understandings or amendments to the contract require for their legal effect express or statutory authorization. Silence on the part of CBHe in response to an intention expressed by the client has neither the effect nor the significance of any intention. Employees of CBHe are only authorized after production of written authorization to make verbal agreements or give verbal commitments going beyond the contents of the written contract.

§ 3 Prices, payment terms, retained title

1. The prices we indicate are to be understood as being plus the VAT applicable as of the time when risk passes plus packaging and shipping, unloading and insurance costs. If no other payment method has been agreed in writing we deliver c.o.d. at the expense of the buyer. To the extent that Incoterms are included by way of individual agreement then the provisions thereof take precedence over these BT. Unless otherwise agreed in writing our invoices are payable immediately without deduction. We are entitled, in spite of buyer provisions to the contrary, to first credit payments to the latter's older debts or less secure debts (§ 366 Civil Code) and to credit payment first to the costs, the interest and lastly to the principal (§ 367 Civil Code). If the client is in arrears then we are entitled from the relevant date to charge interest at the rate of 10% above the applicable base interest rate. It is hereby agreed that we for every reminder, whose costs are to be borne by the client, may charge a comprehensive reminder fee of EUR 10.00. If the client fails to comply with its payment obligations, in particular if the client's cheques are not credited to CBHe's bank account or if the client suspends payments or if we become aware of circumstances that demonstrably call the client's creditworthiness into question (e.g. registration in the list of insolvent debtors) then we are entitled to declare all existing scheduled payments (including deferred ones) immediately due. In addition in that case we are also entitled to demand and/or use prepayment or security.
2. The client is only entitled to set off, retain or reduce payments, even where complaints of defects have been reported, if the counterclaims have been definitively adjudicated or are not in dispute. The client is only entitled to exercise any right of retention if the counterclaim is based on the same (contractual) supply relation.
3. Up through fulfillment of all claims to which CBHe is now or in future entitled in relation to the client for any legal reason CBHe reserves ownership title to the goods delivered. Processing and conversion are at all times done on our behalf as manufacturer, however without any obligation on our part. Should the (co)ownership lapse due to combination then it is hereby agreed that the client's (co)ownership to the unitary item passes pro rata per value to us according to the invoiced value. The client stores our (co-)property at no charge. Goods to which the seller is entitled to (co-)ownership are referred to below as retained title goods. Retained title goods must be labeled as such and separated. However the client is entitled to process or dispose of the retained title goods in its proper business operations as long as it is not in arrears or reasons obtain that oblige it to file for insolvency. Attachment or seizure as collateral of the delivery item or the retained title goods are not allowed in relation to third parties. Claims arising from onward sale or for other legal reasons (insurance, illicit action) in relation to the retained title goods (including all balance payables on current account) are hereby assigned to the full extent to us by the client as collateral. The client is irrevocably authorized upon agreement on the contract item to collect on claims assigned to us for its account and on its own behalf. At our demand the client must disclose assignment, to provide required information and submit documentation. The client is obliged to supply goods with retained title to the extent that the latter are retained title goods or collateral property supplied by the client to third parties.
4. In case of action in breach of the contract by the client, in particular in case of payment arrears, we are entitled to repossess the retained title goods, to assign the claim to surrender derived from it to third parties or, where feasible, to demand assignment of the client's claim to surrender against third parties. Repossession as well as in attachment of the retained title goods do not constitute withdrawal from the contract.
5. CBHe reserves the right to samples, cost estimates, drawings, files and other information of physical and incorporeal nature, including in electronic form, and ownership and intellectual property rights provided that the latter are not held by others. They may not be made accessible to third parties. CBHe puts itself under an obligation to treat information whose use the client is exclusively entitled to in confidence.

§ 4 Assignment

Without CBHe's written consent the client may not assign claims to third parties, regardless of the legal reason.

§ 5 Delivery and performance deadlines

1. Commencement of our indicated delivery deadline assumes agreement being reached on all technical issues. Delivery periods and deadlines do not constitute set dates, the latter requiring a separate written agreement. They are in addition non-binding as long as the parties have not bound themselves to them. All delivery deadlines are under the proviso that there is correct and timely incoming delivery. Partial deliveries are allowed. The obligation to comply with the delivery deadline additionally assumes timely and proper fulfillment of obligations by the client. We reserve the right to invoke the objection that our own contracts have not been fulfilled.
2. Deadlines and periods whether for separate services or those accompanying services, are contingent upon all of the client's machinery, installations, equipment, tools, auxiliary personnel (including in part), utilities (electricity, high-voltage electricity, water, compressed air, etc), auxiliary facilities (cranes, forklifts, etc) as well as eventually auxiliary teams being available at the building site. If CBHe, besides assembly services, is obliged to supply (spare) parts then all service deadlines are contingent upon correct and timely incoming deliveries. Partial deliveries are allowed and are invoiced separately.
3. Each shipment between the contract interlocutors is at the risk and expense of the client. The risk passes to the buyer as soon as the shipment has been surrendered to the party carrying out shipment or for the purpose of shipment to the client has left our warehouse or that of our supplier. If shipment is delayed or frustrated for no fault of our own then risk passes upon notification of the client that the goods can ship. Even without any express written order by the client CBHe is entitled but not obliged to insure deliveries on the latter's behalf and for its account.

§ 6 Warranty and liability

1. CBHe is liable for information and advice likewise in the context of a contract relationship that has been initiated and still exists.
2. Defects must be complained of in writing by the client immediately and at the latest within ten days of receipt of the goods and/or rendering of the services by CBHe intelligibly and in writing. Hidden defects must be complained of immediately.
3. The warranty period for new products is twelve months and for used machinery, machine parts, installations as well as their use or other parts for one month calculated in each case from receipt of cash and since passing of risk. This applies to normal use in single-shift operations.
 - a) Subsequent fulfillment must take place at the contractually owed setup site. For such parts as due to a circumstance obtaining when risk passed turn out to be defective subsequent fulfillment is at no charge. The type of subsequent improvement or replacement of defective parts is determined by CBHe.
 - b) In order to undertake all subsequent improvements and replacement deliveries that CBHe deems necessary the client after consultation with CBHe must provide the necessary time and opportunity. The client only has the right to undertake this itself in emergency cases, which means

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where there is direct jeopardy to operational safety or to avert disproportionately large damages. But in that case it must provide warranty that remedy of defects will be carried out professionally. The client must in such cases inform CBHe immediately by telephone in advance. The client must in the emergencies above identify the problems, the machinery and/or equipment in detail.

- c) Of the costs directly incurred by subsequent improvement or replacement delivery, provided that the complaint turns out to be justified, CBHe must bear the costs of subsequent improvement or shipment. CBHe bears in addition the costs of dismantling and reassembling the main performance at the fulfillment venue as well as the costs of any eventually required technicians and assistants including their travel expenses provided that this does not entail any disproportionate expense for CBHe. At the demand of CBHe the client must provide at its own risk its available technical aids such as tools, cranes, forklifts, etc, manned where required.
- d) The client has in the context of statutory regulations a right to withdraw from the contract if CBHe (taking statutory exceptions into account) lets an appropriate second deadline imposed on it pass to no avail as well as at least two additional subsequent deadlines for subsequent fulfillment. Where there is only an insignificant defect the client has only the right to reduce the agreed fee. Withdrawal is in that case barred.
- e) No liability is assumed in the following cases in particular: Unsuitable or improper use by the client or its agents, incorrect assembly or commissioning by the client or by third parties, wear, incorrect or negligent handling, improper maintenance, unsuitable supplies, flawed construction work, unsuitable construction ground, chemical, electro-chemical or electric impacts for which CBHe is not responsible or that were recognizable when the order was placed. The client bears the burden of demonstration and proof in these cases. Where the client or a third party rectifies unprofessionally then there is no liability on CBHe's part for the resulting consequences. Should the client demand that warranty work be undertaken at a venue of his choosing, i.e. not the same as the original delivery site, then the client only has a claim to subsequent fulfillment after down payment of an appropriate advance or equivalent security for the entrepreneur's expected extra costs (labor time, travel expenses and per diem at CBHe's standard rates).
In addition for legal flaws: If use of the delivery item leads to infringements of intellectual property rights or proprietary rights in the national jurisdiction CBHe will attempt at its own expense to procure for the client the right to further use or modify the delivery item in a reasonable way such that the infringement is eliminated. If this is not possible on financially feasible terms or within an appropriate period of time then the parties are entitled to withdraw from the contract.

§ 7 Further reaching liability

CBHe is only liable under statutory regulations, with reference made here to the burden of demonstration and proof incumbent in this matter on the client (not applicable with attributable injury to body, health or life):

- 1. Provided the latter is not accused of any intentional breach of the contract, limited to the typically predictable occurring damages.
- 2. For culpable breach of essential contractual obligations CBHe is also liable in case of gross negligence by subordinate employees. In case of their negligent culpability, liability is limited to the contractually typical reasonably predictable damages. Tort compensation claims are barred where this also applies to competing contractual claims.
- 3. For damages not caused to the delivery item itself CBHe will only be liable in case of intent, gross negligence by the owner or management bodies or top executives or if the objects of legal protection of life, limb and health were injured or if there were defects that CBHe maliciously concealed or whose absence it had guaranteed.
- 4. If the client tentatively or definitely commissions a plant delivered by CBHe or another plant, after assembly work has been performed by CBHe without training, without or prior to a contractually stipulated final inspection then this is without further ado at the client's own risk. Plant related malfunctioning and/or inadequate performance of the delivery item (plants, plant parts or other attachable parts) after tentative commissioning (i.e. in the period between final acceptance of machinery and final acceptance of all performance (=acceptance within the meaning of § 640, para 1 Civil Code) do not establish any contractual or quasi-contractual damage claims under the aspect of negligent culpability against the entrepreneur; its management bodies or its deployed agents. Any liability for illicit actions for negligent culpability by the entrepreneur, its management bodies or top executives and/or agents to the extent and in the period of time described above is barred. Claims for illicit actions against CBHe, its management bodies top executives and/or agents for physical and/or financial damages are, for grossly negligent culpability, limited to the commodity value of the plant delivered by CBHe and otherwise barred provided this also applies to competing contractual claims. The client's unnecessary expenses incurred in connection with tentative commissioning, in particular for raw materials, additives and personnel, must only be borne by CBHe if CBHe has previously given assurances that the plant was in a condition qualified for final inspection and acceptance, that is in condition corresponding to the guaranteed properties, and that the plant was subsequently operated with a commercial product. The client must record and substantiate expenditures made in this context and assert them within a month of their incurrence.
- 5. The client is liable to the entrepreneur for the fact that the product provided by the latter (client) for tests in the plants, machinery or a part of the company has the properties guaranteed. Where the guaranteed properties are lacking and the material causes damage to the plants, machinery or their parts the client is then responsible for this.
- 6. Liability under the Product Liability Act is not affected by the above.

§ 8 Notional acceptance

Where commissioning occurs without authorization by the client with a commercial product and/or in the context of business operation procedures without formal minutes of final inspection and acceptance and/or confirmation of final acceptance by the entrepreneur then the plant is deemed to have been accepted without reservation (acceptance of performance). Should formal final inspection and acceptance fail to occur despite challenge to the client to do so and with simultaneous indication of willingness to accept the plant by the entrepreneur then the plant is deemed upon further operation to be accepted at the end of twelve days.

§ 9 Supplemental assembly terms

Services by CBHe that are limited solely to monitoring (supervision) of otherwise agreed and/or otherwise stipulated execution of assembly are solely such as occur in the presence (to be confirmed in writing) of the chief engineer or assembly technician on site in the framework of agreed working hours. Should the work mission take longer than ten hours a day then the supervision obligation is limited to the period of actual presence of the chief engineer or assembly technician on site relating to work otherwise carried out at the behest of the client.

§ 10 Patents and copyright

The client is obliged to inform CBHe immediately if it becomes aware of any infringement of proprietary patents or copyrights by a product supplied by CBHe. Should it not be possible to obtain a right to commercial use then CBHe is at its own option entitled to modify the product in such a way that the patent is not infringed. If the client modifies the product we deliver and/or integrates it into a system without any action by CBHe, or if we on the basis of express instructions by the client but against our own recommendations fashioned the product in such a way that this entails infringement of patent laws then the client must hold us harmless against claims by the actual or purported holders of the rights. Our programmes and their concomitant documentation are for the client's own use and the latter receives a simple and non-transferable license. Without our prior written consent, to be granted at any time for the justified interests of the client, provided that CBHe's justified interests are protected, the client may make neither programmes nor documentation accessible to third parties. Copies may only be made for archive purposes, as a replacement or for troubleshooting; where originals bear a notice attesting to copyright protection then it must also be attached to copies by the client.

§ 11 Venue of performance and forum for legal action

The venue for performance of all parties is at the registered offices of CBHe. Where there are several branch offices this is Hennef/Sieg. Bonn has been agreed as the proper forum for legal action. The laws of the Federal Republic of Germany apply exclusively. That also applies to these Business Terms and to all legal relations between us and our contract interlocutors. The application of the "Standard Law on the International Sale of Movable Property" (EKG) and the "Standard Law on the Signing of International Purchasing Contracts" (EAG/CISG) is expressly barred.

§ 12 Severability clause

Should individual provisions in these Business Terms be or become void, of no legal effect or open to challenge then the legal effect of the remaining provisions or agreements will not be impaired. The relevant provisions must be interpreted in such a manner that the intended commercial purpose is achieved in a maximally precise legally allowed manner. This also applies mutatis mutandis to gaps.

C H R O N O S BTH GmbH