

## **Betz-Tools Munich General Terms and conditions**

### **§ 1 General, scope of application**

Unless otherwise agreed in writing, all supplies, services and offers of Betz Tools shall be subject to the following terms and conditions. Counter-confirmations by customers with reference to their own terms and conditions are hereby expressly rejected. These terms and conditions still apply if Betz Tools, in awareness of conditions of the customer which deviate from or contradict these terms and conditions, provides services for the customer without reserve.

### **§ 2 Offers / Order confirmations**

**2.1.** Offers of Betz Tools are subject to change without notice unless expressly designated as binding by Betz Tools. Betz Tools reserves the right to make reasonable technical alterations in shape, colour and/or weight.

**2.2.** Unless otherwise agreed, prices are ex domicile Betz Tools not including taxes, packing, insurance, freight, customs or any other outlays and expenses. Supplies and services for which no particular remuneration has been agreed shall be charged on the basis of the Betz Tools price list valid at the time the order is received.

**2.3.** In the case of improvements and model upgrades by our suppliers, Betz Tools reserves the right to deviate from our sales information, offers and order confirmation insofar as these deviations are reasonable and acceptable for the customer.

**2.4.** Orders and verbal agreements shall only be effective subject to written confirmation by Betz Tools. On ordering the goods, the customer makes a binding declaration that he wants to acquire the ordered goods. Betz Tools reserves the right to a period of two weeks to confirm the order. Acceptance of the order can be declared either in writing or by delivery of the goods to the customer. Insofar as the scope of the order deviates from the offer of Betz Tools, Betz Tools reserves the right to alter the terms and conditions accordingly. Betz Tools is only obliged to deliver after confirmation of the new terms and conditions by the customer. If a consumer orders the goods by electronic means, Betz Tools will immediately confirm the receipt of the order. Confirmation of the receipt of the order does not constitute a binding acceptance of the order. The receipt of confirmation can be given in conjunction with the declaration of acceptance. The customer shall be informed immediately in the case of unavailability. Any payments already made shall be reimbursed. If a consumer orders the goods by electronic means the contract text will be stored by Betz Tools and sent to the customer on request along with these General Terms and Conditions by e-mail.

Objections to order confirmations must be made in writing immediately, but at the latest within 8 days of the date of issue and always before Betz Tools starts providing services or goods. Later objections shall only be considered subject to written confirmation by Betz Tools

### **§ 3 Payment conditions.**

**3.1.** Payments shall be made in accordance with the agreement on a cashless basis and without charges or deductions to the account number given by Betz Tools. Payment may only be made by cheque subject to a separate agreement.

**3.2.** Unless stated otherwise in the offer or the order confirmation, all payments are due for payment without deductions within 10 days of the invoice issue date. Payment deadlines are fulfilled if Betz Tools has free access to the amount within the aforementioned deadline period. When this period expires, the customer is in default of payment. If the customer is a company, the money owed shall be subject to an interest rate of eight percentage points over the key rate pursuant to § 247, section 1 of the German Civil Code (BGB) for the duration of the default. Betz Tools reserves the right to verify and assert higher damages due to default in payment.

**3.3.** The customer may only set off claims if his counterclaims, regardless of the legal basis, are legally effective or acknowledged by Betz Tools. The customer can only exercise a right of retention if his counter-claim is based on the same contractual relationship.

**3.4.** The customer can pay the purchase price by COD or on account. In the case of new customers, deliveries shall only be made COD or for payment in advance.

### **§ 4 Deliveries**

**4.1.** Delivery deadlines are only binding for Betz Tools if they have been confirmed in writing. This only applies if the customer also remains true to the contract, in particular with regard to the terms and conditions of delivery agreed between the parties.

**4.2.** Force majeure and other events for which Betz Tools is not responsible and which could endanger the troublefree processing of the order, in particular delivery delays or non-delivery by Betz Tools suppliers within the framework of a congruent covering transaction, traffic and operational problems, industrial disputes, scarcity of materials or energy shall entitle Betz Tools to postpone the delivery or to withdraw fully or partially from the contract without the customer being able to derive any claims from this. Betz Tools is only entitled to withdraw from the contract if later delivery is not possible. In such cases Betz Tools shall inform the customer immediately of the non-availability of the goods and, in the event of withdrawal from the contract, immediately return any payments already made by the customer.

**4.3.** Betz Tools is entitled to make part deliveries and to issue part-invoices.

**4.4.** The customer is obliged to treat the goods with care. Insofar as maintenance or inspection work is necessary, the customer shall carry this out at regular intervals at his own expense. The customer shall bear the burden of proof that the goods have been handled with the proper care.

## **§ 5 Dispatch and transfer of risk**

**5.1.** Insofar as the order confirmation does not state otherwise, the delivery is made "ex location", i.e. the domicile of Betz Tools.

**5.2.** The dispatch of the goods shall be at the expense of the customer and - insofar as no other instructions are given - to the address of the customer as stated in the order form. Betz Tools does not assume any guarantee for the cheapest and/or fastest dispatch method.

**5.3.** If the customer is a company, the risk of accidental destruction and accidental deterioration of the goods passes to the purchaser on handover of the goods, in the case of subcontracted dispatch, when the goods are handed over to the forwarding agent, carrier or other person or institution commissioned with the dispatch. The handover is deemed to have taken place even if the customer is in default with acceptance.

**5.4** If the customer is a consumer, the following rules shall apply: The consumer has the right to revoke his declaration of intent with regard to the conclusion of the contract within 2 weeks of receipt of the goods. It is not necessary to give reasons for the revocation and this can be made in written form or by return of the goods to Betz Tools. The 2-week deadline is deemed to be complied with if the goods are sent in time. If the customer exercises his right to revoke the contract he is obliged to return the goods if they were sent by parcel post. If the right of revocation is exercised, the costs for the return of goods up to an order value of Euro 40.00 shall be borne by the consumer unless the goods delivered do not correspond to the goods ordered. In the case of an order value over Euro 40.00 the consumer is not obliged to assume the costs for return. The customer shall reimburse Betz Tools for the reduction in value caused by the use of the goods for their intended purpose. The consumer may examine the goods carefully and thoroughly. The loss of value due to usage beyond mere examination of the goods means that the goods can no longer be sold as "new" and must be borne by the customer.

## **§ 6 Guarantee**

**6.1.** Companies must notify Betz Tools in writing of any obvious defects within two weeks of receipt of the goods.

Otherwise any guarantee claims shall lapse. Timely dispatch of the notification is sufficient for compliance with the deadline.

The company bears the full onus of proof for all claims, in particular for the defect itself, for the time of the detection of the defect and for the timely notification of complaint. Consumers must notify Betz Tools of obvious defects in writing within two months after the time at which the non-contractual condition of the goods is established. Timely dispatch of the notification is sufficient for compliance with the deadline. If the consumer fails to make this notification, the guarantee rights shall lapse two months after establishment of the defect. This does not apply in the case of intention to deceive on the part of the vendor. The consumer shall bear the onus of proof for the time of the establishment of the defect. If the consumer was moved to buy the goods by incorrect claims of the manufacturer the consumer shall bear the onus of proof for his decision to purchase. In the case of used goods, the consumer shall bear the onus of proof for the defectiveness of the goods.

**6.2.** If the customer is a company, Betz Tools shall honour the guarantee for defects in the goods at its own discretion by repair or replacement. Replacement shall only be made if the defective article has been returned to Betz Tools.

Betz Tools shall bear the costs of the return transport. Betz Tools is, however, entitled, to refuse the type of postfulfilment selected if it is only possible at unreasonable costs and the other type of post-fulfilment does not involve any major disadvantages.

**6.3.** If the post-fulfilment fails, the customer can choose between reduction of the price or withdrawal from the contract. In the case of only minor infringements of the contract, in particular minor defects, the customer is not entitled to withdraw from the contract. If the customer chooses to withdraw from the contract due to a legal or material defect after the failure of postfulfilment, he shall not be entitled to any compensation due to the defect. If the customer chooses compensation after failure of post-fulfilment, the goods shall remain with the customer provided that this is acceptable to the customer. The compensation is limited to the difference between the purchase price and the value of the defective article. This does not apply if Betz Tools was guilty of intent to deceive. The post-fulfilment is regarded as failed after the second vain attempt unless further attempts at repair are reasonable and acceptable for the customer on the basis of the subject of the contract. The legal stipulations with regard to dispensability of the period of notice shall remain unprejudiced.

**6.4.** For companies the guarantee period is one year as of delivery of the goods. The period of statutory limitation in the event of a delivery default pursuant to §§ 478, 479 of the German Civil Code (BGB) remains unprejudiced.

**6.5.** If the customer receives defective assembly /operating instructions Betz Tools is only obliged to supply non-defective assembly / operating instructions. This also applies when the defect in the assembly instructions prevents the orderly assembly or the intended operation of the article concerned. If the purchaser is a company, only the quality of the goods pursuant to the production description of the manufacturer shall be regarded as agreed. Public statements, recommendations or advertising of the manufacturer do not constitute a statement regarding the contractual quality of the goods.

**6.6.** Guarantees in the legal sense are not given by Betz Tools. This does not prejudice manufacturer guarantees.

**6.7.** In the case of rental or lending, the customer is obliged to insure the products concerned at his own expense against accidental destruction and similar (e.g. theft, etc). On request he

shall provide Betz Tools with written verification of this.

#### **§ 7 Liability limitation**

**7.1.** In the case of lightly negligent infringements of obligations, the liability of Band Pro is restricted to the predictable, typical, direct average damages for the type of goods concerned. This also applies to lightly negligent infringements of obligations by the legal representatives or vicarious agents of Betz Tools. With regard to companies, Betz Tools shall not be liable for lightly negligent infringement of minor contractual obligations.

**7.2.** The aforementioned liability restrictions do not apply to claims of the customer arising from product liability. Nor do the liability restrictions apply to personal injury, damage to health or loss of life of a customer attributable to Betz Tools.

**7.3.** Claims for compensation by a customer due to a defect shall be subject to statutory limitation in one year after delivery of the goods.

**7.4.** Betz Tools is not liable for material transferred for further processing or for damages and costs arising from processing.

The same applies to material and appliances handed over to Betz Tools for storage.

**7.5.** In the case of sales transactions Betz Tools is not liable for technical alterations made by the manufacturer in production.

The devices conform to the relevant regulations in the manufacturer country. If, in the case of certain applications, conformance with German protective regulations has to be verified, it is the obligation of the customer to ensure conformance with such regulations and to have the devices or their installation inspected by an authorised institution at their own expense before starting up.

#### **§ 8 Reservation of ownership**

**8.1.** Until all claims of Betz Tools against the customer now or in the future, for whatever legal reason, are fulfilled (including all balance claims from a current account), Betz Tools shall be granted the following securities which Betz Tools can release at their own discretion on request insofar as their value continuously exceeds the value of the claims by more than 20 %.

**8.2.** Until full payment of all claims the goods shall remain the property of Betz Tools. Mixing, processing or conversion shall always be carried out for Betz Tools as manufacturer but without any obligations on the part of Betz Tools. If the (co-)ownership of Betz Tools lapses due to connection of articles it is hereby agreed that the (co-) ownership of the customer in the composite article shall be transferred to Betz Tools on a pro rata basis (invoice value). The customer shall store the (co-)owned property of Betz Tools free of charge. Goods for which Betz Tools has (co-)ownership shall be referred to in the following as conditional goods.

**8.3.** The customer is entitled to process and sell the conditional goods in the course of orderly business as long as he is not in default. Pledging of such goods or their transfer by way of security are not permitted. The claims arising from the resale of the conditional goods or for any other legal reason (insurance, unlawful action) are hereby fully assigned by the customer to Betz Tools by way of precaution. Betz Tools hereby accepts this assignment. To secure its payment claims Betz Tools is entitled to disclose this assignment at any time. Betz Tools revocably authorises the customer to collect the claims assigned to Betz Tools in its own name for Betz Tools account. This collection authorisation can only be revoked if the customer fails to fulfil his payment obligations.

**8.4.** In the case of claims by third parties to the conditional goods, the customer shall draw attention to the ownership of Betz Tools and immediately inform Betz Tools accordingly. Costs and damages shall be borne by the customer. The customer shall keep conditional goods separate from his own property and mark it as such.

**8.5.** In the case of infringements of the contract by the customer - in particular default in payment - Betz Tools is entitled to withdraw from the contract and to demand the return of the conditional goods.

#### **§ 9 Confidentiality**

**9.1.** The customer is obliged to treat all confidential business and technical information (in particular price agreements) received from Betz Tools with strict secrecy and in particular not to use such information for purposes of competition but solely for the purpose of this contract. Confidential information within the meaning of this agreement is all business, financial, technical, legal or other information or documentation provided verbally, in writing or in any other manner (particularly in electronic form) unless such information is generally accessible without infringing upon this agreement or was already known to the customer without infringing on this agreement, which the customer must prove.

**9.2.** The customer shall ensure that the provisions of this confidentiality agreement are also observed by his employees, vicarious agents and consultants even after termination of the respective contractual relationship between the customer and the persons cited.

**9.3.** The customer shall inform Betz Tools immediately if confidential information provided by Betz Tools was already known, or if information which Betz Tools regards as confidential has become known or if he is required to disclose such confidential information by the courts or other official bodies or is requested to do so by any other third party.

**9.4.** This confidentiality agreement shall remain valid even after termination of the respective contractual relationship.

#### **§ 10 Data protection**

Betz Tools may record personal data from customers for its own purposes, namely to provide the services required by the customer. Betz Tools is expressly obliged to process and use any such data exclusively in compliance with German and European data protection laws. Betz Tools will observe data secrecy in every case. Betz Tools may also pass on such personal data to third parties who are involved in the provision of Betz Tools services. In this case Betz Tools shall oblige such third parties to observe the aforementioned restrictions. If the customer passes on personal data of third parties to Betz Tools, he shall assure Betz Tools that the parties concerned have consented to the transfer and contractual processing or use by the recipient.

**§ 11 Concluding provisions**

**11.1.** The law of the Federal Republic of Germany shall apply exclusively, excluding the Viennese UN convention on the international sale of goods (CISG) or any other bilateral or multilateral conventions on sale transactions.

**11.2.** If the customer is a merchant, legal entity under public law or a special public fund the exclusive place of jurisdiction for all disputes arising from this contract is the domicile of Betz Tools. The same applies if the customer has no general place of jurisdiction in Germany or if his address or habitual residence are not known at the time of bringing legal action. Betz Tools is also entitled to bring legal action before a court with jurisdiction for the domicile or offices of the customer.

**11.3.** In the event that individual provisions of a contract concluded on the basis of these General Terms and Conditions or these General Terms and Conditions themselves should be or become invalid, this shall not prejudice the validity of the other provisions. In such a case the parties are obliged to replace the invalid provision by a valid provision which comes as close as possible to the economic intention of the original provision. If the parties cannot agree on the formulation for the substitute provision within a reasonable period of time, the legal stipulations shall apply. The aforementioned principles shall also apply analogously if a provision should prove to be unfeasible or incomplete.

Munich, February 2007