

Terms of purchase/delivery

Bauer Equipment America, Inc. Bauer Manufacturing LLC



1. Scope of Terms

1.1. These terms of purchase and delivery (these "Terms") are attached or incorporated by reference to an order (the "Order") for the sale of goods or the providing of services (collectively, the "Work") by the vendor identified therein (the "Contractor") to one or more of the following BAUER Group companies (the "Client"): Bauer Equipment America, Inc. and Bauer Manufacturing LLC.

1.2. These Terms, together with the commercial terms specified in the Order, constitute the entire agreement between the parties with respect to the Work. To the extent of any conflict between any of these Terms and the provisions of any other agreement between the parties, these Terms shall control. Notwithstanding the foregoing, in the event the parties have executed a "master purchase agreement," "master services agreement," or similar agreement pursuant to which the parties set forth certain additional terms and conditions governing the Work, any conflicting terms or provisions of such agreement shall control over these Terms, provided that such agreement specifically states that it is intended to amend or modify these Terms and is signed by an authorized representative of each party.

2. Orders

2.1. The Order sets forth the commercial terms applicable to the Work. The Client's performance descriptions, drawings, indications of weight, dimensions and consumption, raw material and production specifications set forth in each Order are binding and describe the agreed quality.

2.2. The Client retains ownership and intellectual property rights to photocopies, drawings, calculations, raw material and product specifications as well as other documents. Such documents may not be made accessible to third parties without the consent of the Client in text form and must be used exclusively for performance of the contract between the Contractor and the Client.

3. Confidentiality; No Public Announcement

3.1. All non-public, confidential or proprietary information of the Client, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by the Client to the Contractor, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Work is confidential, solely for the use of performing the Work and may not be disclosed or copied unless authorized by the Client in writing. The Contractor shall protect and safeguard all confidential information with at least the same degree of care as the Contractor would protect its own confidential information, but in no event with less than a commercially reasonable degree of care. Upon the Client's request, the Contractor shall promptly return all documents and other materials received from the Client. In the event that the Client consents to the disclosure of confidential information by the Contractor to subcontractors or other third parties engaged by the Contractor in connection with the Work, the Contractor shall ensure that such third-parties are bound by confidentiality obligations that are at least as restrictive as those set forth in these Terms.

3.2. The Contractor shall not make any statement (whether oral or in writing) in any press release, external advertising, marketing, or promotion materials regarding the subject matter of the Order, the Work, these Terms, the Client or its business unless it has received the express written consent of the Client.

3.3. The Client shall be entitled to injunctive relief for any violation of this Section.

4. Prices; Payment Conditions; Invoice Details

4.1. The agreed prices for the Work (the "Contract Price") are set forth in the Order. The Contract Price shall remain fixed for the term of the Order and shall be inclusive of any and all packaging, transportation costs, insurance, customs duties and fees and applicable taxes. No increase in the Contract

Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of the Client.

4.2. The agreed Contract Price is due for payment net within sixty days. The payment period begins as soon as the Work has been fully performed and the properly issued invoice has been received by the Client. However, if the Client accepts the Work before the agreed Delivery Date (as defined herein), the agreed payment period does not begin until the date of the agreed Delivery Date.

4.3. The Client only makes payments on the first Wednesday after maturity. No maturity interest is owed. The default interest rate amounts to five percentage points above the basic interest rate for the year. Default is not considered to begin before the aforementioned payment date plus the duration of the internal bank transfer. In all other cases, the statutory regulations concerning payment default shall apply.

4.4. Payment by the Client shall not constitute approval of the Work. In the event any portion of the Contract Price is paid by the Client prior to the delivery of such Work or as a "down payment" for the Work, the Client has the right to demand a security from the Contractor for repayment amounting to the down payment. The security must be an unconditional, irrevocable and directly enforceable guarantee, unlimited in time and payable on first demand, from a bank or credit insurer in the United States. The down payment guarantee will be returned when the down payment plus interest has been redeemed in its full amount by crediting towards due payments or when the Contractor has paid back the down payment plus interest in its full amount. The Client is entitled to reject a guarantor proposed by the Contractor for any reason.

5. Delivery Periods and Deadlines; Late Delivery

5.1. The agreed delivery deadline(s) for the Work (the "Delivery Date") specified in the Order are binding. The Contractor shall promptly notify the Client if it anticipates that it will be unable to meet the Delivery Date; provided, however, receipt of such notice by the Client shall in no way be deemed a waiver of the Client's rights hereunder.

5.2. If the Contractor fails to deliver the Work, or portions thereof, by the relevant Delivery Date, the Contractor shall pay to the Client an amount equal to (i) 1.5% of the Contract Price for Orders with a Contract Price equal to or less than \$5,000.00, and (ii) 1.0% of the Contract Price for Orders with a Contract Price greater than \$5,000.00, in each case, for each day such Work remains undelivered (the "Liquidated Damages"); provided, however, such Liquidated Damages shall not exceed 20.0% of the total Contract Price. The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that the Client's harm caused by the Contractor's failure to meet the Delivery Date would be impossible or very difficult to accurately estimate as of the date hereof, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from such failure. The Contractor's payment of the Liquidated Damages is the Contractor's sole liability and entire obligation and the Client's exclusive remedy for any failure by the Contractor to meet the Delivery Date.

6. Right of Inspection

6.1. After giving appropriate advance notice, the Client is entitled to inspect the ordered Work and its production process in the workshops/premises of the Contractor and its suppliers, and to request information concerning the Contractor's own monitoring activities. The Contractor will provide the necessary equipment, resources and other services required for the inspection free of charge. The inspection or non-inspection of any portion of the Work by the Client shall not constitute approval thereof.

7. Delivery, Accompanying Documents, Packaging

7.1. The Work shall be delivered to the address specified in the Order (the "Delivery Point"). The Contractor shall provide the Client with at least forty-eight hours' advance written notice of delivery and such delivery shall be carried out in consultation

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- with the Client and during the Client's normal business hours.
- 7.2. The Contractor must comply with the Client's shipping rules and packaging guidelines in their current valid version, or, if there are not such rules or guidelines, in a manner sufficient to ensure that the Work is delivered in an undamaged condition.
- 7.3. Upon delivery of the Work, the Contractor shall provide the Client with a bill of lading, or other similar document, which clearly indicates the Order number and the exact contents of the delivery. The Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence and any other documents retaining to the Order.
8. **Goods-Related Foreign Trade Data**
- 8.1. In order to fulfil the requirements of customs law and foreign trade law along its future supply chain, the Client requires information concerning the Work delivered by the Contractor pursuant to applicable customs laws and export control laws. Concurrently with the delivery of any goods by the Contractor, at no cost to the Client, the Contractor shall deliver to the Client a certificate (each, a "Foreign Trade Certificate") setting forth the following information:
- The information specified in Section I-A of the German Foreign Trade Regulations (as in effect at the time of delivery) for goods that are constructed specifically for military purposes or are otherwise classified as control items in the EU-Dual Use Regulation (as in effect at the time of delivery);
 - If applicable, the export control classification number in accordance with the US List of Dual-Use Items for goods that are subject to the US Export Administration Regulations (as in effect at the time of delivery);
 - The customs tariff number (at least 8 digits), together with a description of the goods, in accordance with the customs tariff of the European Union based on the harmonized system code.
 - The country of origin (non-preferential origin), together with any supplier declarations for preferential origin (for goods entitled to preferential treatment) and, if requested by the Client, certificates of origin; and
 - Any laws, rules or regulations imposed by any governmental authority that ban or otherwise restrict the sale or transportation of the delivered goods (e.g., embargos, regulations relating to the transportation or sale of hazardous materials, restrictions resulting from reservations of re-exportation, etc.).
- 8.2. The Foreign Trade Certificate shall be signed by an authorized representative of the Contractor and shall certify that the certificate includes all of the information required under this Section 8 and that such information is complete and accurate as of the Delivery Date. Without limiting the foregoing, the Contractor shall immediately notify the Client of any changes to the information contained within the Foreign Trade Certificate and shall deliver an updated certificate reflecting such changes at no cost to the Client.
- 8.3. At the request of the Client, the Contractor shall provide such additional information as may be reasonably requested by the Client from time-to-time.
- 8.4. The Contractor shall be responsible for, and indemnify the Client from and against, any and all Losses (as defined herein) incurred by the Client or any other Indemnitees (as defined herein) due to any inaccuracies or misrepresentations contained in the Foreign Trade Certificate or otherwise arising in connection with the Contractor's breach of its obligations under this Section 8.
9. **Hazardous Substances**
- 9.1. If the ordered services comprise or include hazardous substances, the Contractor must comply with the applicable laws or regulations and BAUERS Standard on Controlled Substances which are accessible through the BAUER Homepage in the last and final version and provide the relevant certificates to the Client at no extra cost.
10. **Transfer of Risk, Reservation of Title**
- 10.1. Delivery shall be made DAP the Delivery Point. Title passes to the Client upon delivery of the Work to the Delivery Point. The Contractor bears all risk of loss or damage to the Work until delivery of the Work to the Delivery Point.
11. **Objection to Defects; Defect Claims**
- 11.1. The Client has the right to inspect the Work on or after the Delivery Date. The Client, at its sole option, may inspect all or a portion of the Work, and may reject all or any portion of the Work if it determines the Work is nonconforming or defective.
- 11.2. If the Client rejects any portion of the Work, the Client has the right, effective upon written notice to the Contractor, to: (a) rescind the Order in its entirety; or (b) reject the Work and require that the Contractor repair or replace the rejected Work. If the Client requires that the Contractor repair or replace the Work, the Contractor shall, at its expense, within seven days, or such other time period as specified by the Client, repair or replace the nonconforming Work and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Work and the delivery of replacement Work.
- 11.3. If the Contractor fails to timely deliver replacement Work, the Client shall have the right to repair or replace such Work from a third party and charge the Contractor the cost thereof, terminate the Order for cause and pursue any additional remedies available to it pursuant to these Terms.
- 11.4. Any inspection or other action by the Client under this Section shall not reduce or otherwise affect the Contractor's obligations under the Order or these Terms, and the Client shall have the right to conduct further inspections after the Contractor has carried out its remedial actions. All Warranties applicable to the Work shall apply equally to any Work that has been repaired or replaced by the Contractor pursuant to this Section 10 and such warranties shall be deemed to have been made upon the completion of such repair or replacement.
12. **Indemnification**
- 12.1. The Contractor shall defend, indemnify and hold harmless the Client and the Client's parent company, their subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and the Client's customers (collectively, "Indemnitees") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Work supplied by the Contractor or as a result of the Contractor's negligence, willful misconduct or breach of the Order or these Terms.
- 12.2. The Contractor shall, at its expense, defend, indemnify and hold harmless the Client and any Indemnitee from and against any and all Losses arising out of or in connection with any claim that the Client's or Indemnitee's use or possession of the Work infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party.
- 12.3. In no event shall the Contractor enter into any settlement relating to any Claims under this Section 12 without the Client's or Indemnitee's prior written consent.
13. **Warranty**
- 13.1. The Contractor warrants to the Client that all Work will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by the Client; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties shall survive any delivery, inspection, acceptance or payment of or for the Work by the Client. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of the Client's discovery of the

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noncompliance of the Work with the foregoing warranties.

14. **Provision of Materials; Drawings; Samples**

14.1. All equipment and other tangible property of every description, including supplies, materials, machinery, equipment, drawings, photographic negatives and positives, artwork, copy layout, electronic data, and other items, furnished by the Client (or the Client's customers), either directly or indirectly, to the Contractor or to any supplier to the Contractor in connection with or related to the Order, or for which the Contractor has been at least partially reimbursed by the Client (collectively, "Bailed Property") is and will at all times remain the property of the Client and be held by the Contractor on a bailment-at-will basis.

14.2. Only the Client has any right, title, or interest in and to Bailed Property, except for the Contractor's limited right, subject to the Client's sole discretion, to use the Bailed Property in the performance of the Contractor's obligations under the Order. The Contractor shall not use the Bailed Property for any other purpose. The Contractor shall not commingle Bailed Property with the property of the Contractor or with that of a person or entity other than the Client or the Contractor and shall not move any Bailed Property from the Contractor's premises without the prior written approval by the Client. The Client may, at any time, for any reason and without payment of any kind, retake possession of any Bailed Property without the necessity of payment or notice to the Contractor, or a hearing or a court order, which rights, if any, are waived by the Contractor. Upon the Client's request, Bailed Property will be immediately released to Client or delivered to the Client by the Contractor. Bailed Property shall be returned to the Client upon the delivery of the Work under the Order. The Contractor's continued holding of Bailed Property after demand has been made by the Client for delivery will substantially impair the value thereof, and, accordingly, the Client will be entitled to a court order of possession without any need of proving damages or posting of a bond. To the fullest extent permitted by law, the Contractor shall not allow any encumbrance to be imposed on or attach to the Bailed Property through the Contractor or as a result of the Contractor's action or inaction, and the Contractor hereby waives any encumbrance that it may have or acquire in the Bailed Property.

14.3. The Contractor acknowledges and agrees that (a) the Client is neither the manufacturer of the Bailed Property nor the manufacturer's agent, (b) the Client is bailing Bailed Property to the Contractor for the Contractor's benefit, (c) the Contractor has inspected the Bailed Property and is satisfied that the Bailed Property is suitable and fit for its intended purposes, of which the Contractor is aware, and (d) THE CLIENT HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE BAILED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Notwithstanding the foregoing, if the bailment relationship described in this Section is deemed to be a secured financing transaction, the Contractor grants to the Client a continuing security interest in any rights or interests it may have in the Bailed Property.

15. **Spare Parts**

15.1. The Contractor undertakes to keep spare parts for the delivered Work in stock for a period of at least twelve years after delivery.

15.2. If the Contractor intends to cease the production or procurement of spare parts for the delivered Work, the Contractor must inform the Client of such cessation at least six months prior to the actual cessation of production or procurement, as applicable.

16. **Assignment**

16.1. The Contractor shall not assign any of its rights or delegate any of its obligations under the Order without the prior written consent of the Client. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the Contractor of any of its obligations

under these Terms or the Order.

17. **Severability Clause**

17.1. If any term or provision of these Terms are deemed to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. **Applicable Law; Place of Jurisdiction; Waiver of Jury Trial**

18.1. All matters arising out of or relating to the Order or these Terms shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas.

18.2. Any action related to the Work, the Order or these Terms shall be brought in any state or federal court located in Harris County, Texas and the parties submit to the jurisdiction of such courts for such purpose.

18.3. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THE WORK, THE ORDER OR THESE TERMS BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE, INCLUDING THE CONSTITUTION OF THE UNITED STATES OR ANY STATE, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATION. EACH PARTY ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY AND THAT SUCH WAIVER IS A MATERIAL CONSIDERATION FOR ENTERING INTO AND PERFORMING THE ORDER.

19. **Modifications**

19.1. The parties acknowledge and agree that the Client may from time to time sign the Contractor's various forms, such as delivery tickets, labor tickets, bills of lading, purchase orders, or rental tickets; however, the terms and conditions included on such forms, including, without limitation, any "terms of service," "terms of use," "terms and conditions" or similar standard or "boilerplate" terms referenced therein, shall not amend, modify, waive, or release any aspect of these Terms unless such amendment, modification, waiver or release is set forth in writing specifically states that it amends the Terms and is signed by an authorized representative of the Client.

20. **Termination; Cumulative Remedies**

20.1. The Client may terminate the Order, in whole or in part, at any time with or without cause for undelivered Work on five days' prior written notice to the Contractor. In addition to any remedies that may be provided under these Terms, at law or equity, the Client may terminate the Order with immediate effect upon written notice to the Contractor, either before or after the acceptance of the Work, if the Contractor has not performed or complied with any of these Terms or its obligations under the Order, in whole or in part. If the Client terminates the Order for any reason, the Contractor's sole and exclusive remedy is payment for the Work received and accepted by the Client prior to the termination.

20.2. Except as expressly provided in these Terms, the rights and remedies provided in these Terms are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity or by statute.

21. **Intellectual Property**

21.1. Each party shall remain the exclusive owner of such party's intellectual property; provided, however, to the extent required for the Client to use the Work in the manner for which it is purchased, the Contractor hereby grants to the Client a non-exclusive, worldwide, fully paid, perpetual and transferrable license to make, use, copy, modify or create derivative works of such Contractor intellectual property. The Contractor shall

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- promptly disclose in writing to the Client any intellectual property that is conceived, created or developed, in whole or in part, by or on behalf of the Contractor in connection with the performance of the Work, or based on information provided by the Client and the Contractor agrees that such intellectual property shall be the exclusive property of the Client, whether patent applications are filed or other intellectual property protection is sought.
- 21.2. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship developed or created by the Contractor during the course of performing Work ("Work Product") shall belong exclusively to the Client and, to the extent possible, shall be considered "work made for hire" for the Client within the meaning of Title 17 of the United States Code. To the extent the Work Product may not be so considered "work made for hire" for the Client, the Contractor agrees to assign, and hereby assigns at the time of creation of the Work Product, without any requirement of further consideration, any right, title, or interest the Contractor may have in such Work Product. Upon request of the Client, the Contractor shall take such further actions, including execution and delivery of declarations, instruments of conveyance, and the like for any applications or registrations the Client may, at its expense, apply for and as may be appropriate to give full and proper effect to such assignments.
22. **Survival**
- 22.1. Provisions of these Terms which by their nature should apply beyond the term of the Order will remain in force after any termination or expiration of the Order including, without limitation, the provisions set forth in Section 3, Section 6, Section 8, Section 11, Section 12, Section 13, Section 14, Section 15, Section 18, Section 20, Section 21 and this Section 22.
23. **Relationship of the Parties**
- 23.1. The Contractor shall at all times be an independent contractor. Nothing contained herein shall be deemed to create a partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the Contractor and the Client.
24. **Compliance with Laws; Company Policies**
- 24.1. The Contractor shall at all times comply with all laws, rules and regulations imposed by any governmental authority applicable to the Work, the Order, these Terms, the Contractor's business and the exercise of its rights and performance of its obligations hereunder and thereunder. The Contractor shall obtain and maintain all permits, licenses and certifications necessary for the performance of the Work.
- 24.2. At all times during the performance of the Work the Contractor shall comply with the [Link: Supplier Code of the BAUER Group](#) and shall use reasonable efforts to comply with the [Link: Quality Policy of the BAUER Group](#) and the [Link: Sustainability Policy of the BAUER Group](#). The Client shall be permitted to carry out or arrange an inspection of the Contractor's compliance with the foregoing policies.