

Baumüller Anlagen-Systemtechnik GmbH & Co. KG Terms and Conditions of Sale and Delivery

1. Binding Force and Formation of Contract

Deliveries of goods and provision of services will be made exclusively on the basis of these terms and conditions of Baumüller Anlagen-Systemtechnik GmbH & Co. KG, hereinafter referred to as Baumüller. They are an integral part of the supply contracts and are deemed to be acknowledged by order placing. In the case of permanent business relations, they shall also apply to future contracts. Any deviating/conflicting terms and conditions of business of our contracting parties shall be valid only when Baumüller has explicitly and in writing consented to the validity thereof. In case the contracting party does not agree thereto, it is imperative that Baumüller be immediately informed thereof in writing. In this event, Baumüller reserves to withdraw its offers without any claims, of whatever nature, arising against Baumüller. To the extent that deliveries are subject to obligations relating to foreign trade and payments (i.e. pursuant to AWG [Law on Foreign Trade and Payments], AWV [Order for Implementing the Foreign Trade and Payments Law], Dual Use Regulations, KWKG [War Arms Control Law], (U.S.) export control laws/embargo laws or similar regulations), the Buyer shall have sole responsibility for complying with all provisions and stipulations. Any required authorizations will be obtained by the Buyer.

2. Offers

- (a) Offers shall be subject to confirmation, non-binding, and shall be valid subject to Baumüller's possibilities to procure the required materials. Any changes and supplements need to be confirmed in writing. Prior sale shall remain reserved. Prices shall be deemed to be fixed prices only when this is expressly agreed upon in any particular case.
- (b) Any specimens/samples submitted to the Buyer shall be deemed to be approximate illustrative pieces for weight, measure, grade, quality as well as color/color shade and shall not be binding on Baumüller even if the order is placed with reference to such specimens/samples submitted. This shall also apply to any and all documents (illustrations, drawings, weight and measurement specifications) made available to the Buyer, unless they have been expressly referred to as being binding. Any deviations shall be admissible in accordance with DIN [German Industrial Standards], RAL [Committee for Delivery Terms and Quality Assurance in the German Standards Committee], RL/VDI VDE [Directives of the Association of German Engineers, Federation of German Electrical Engineers] or under current practice. Any deviations, in particular due to technically necessary modifications, shall remain explicitly reserved.
- (c) The contracting parties are agreed that this information/know-how constitutes trade secrets of Baumüller (Section 17 of UWG [German Unfair Competition Law]). Therefore, without exception, such documents/information must not be made available to any third parties without the prior express written consent by Baumüller. This shall also apply in particular to all cases of dispute.

3. Prices

Shipments will be packed and (transport) insured exclusively on instruction from and at the expense of the Buyer. Packaging materials shall be returned promptly on request, freight and charges paid. Where a delivery period of more than 4 months has been agreed on, Baumüller shall be entitled to correspondingly pass on to the Buyer any increase in costs that may have occurred (materials, manufacture, assembly, personnel, shipment and the like). In such case, the prices fixed by Baumüller on the date of delivery shall be deemed to be agreed upon. In all cases in which, for instance, the material/design/workmanship experience changes because the documents/samples provided by the Buyer were **not** in conformity with the actual circumstances/were incomplete, Baumüller may reasonably change the prices even **after** formation of the contract in accordance with the costs incurred.

4. Extent of Delivery and Delivery Time

- (a) For the extent of the delivery of goods and the provision of services, the order acknowledged in writing shall be solely authoritative.
- (b) (Minor) technical changes/improvements shall be permitted until dispatch of the consignment. More particularly, such technical changes shall be permissible which could not be foreseen at the time of formation of the contract and have a positive effect on the provision of the scope of services agreed upon. The delivery times shall be apparent from the arrangements between the contracting parties and shall be approximate. Compliance therewith by Baumüller shall require that all commercial/technical issues have been clarified between the parties and that the Buyer has performed all obligations incumbent on it, such as, e.g. procurement of the necessary certificates/authorizations, making an advance payment as agreed, and timely contribution of materials; where this is not the case, the delivery time shall be reasonably extended. This shall not apply to the extent that Baumüller is responsible for the delay.
- (c) Compliance with the term of delivery shall be subject to correct/timely self-delivery. In case Baumüller is not itself supplied by suppliers on time, Baumüller shall be correspondingly released from compliance with the period of delivery; this shall apply under the precondition that Baumüller duly placed its order(s).
- (d) The term of delivery shall be deemed complied with if, by expiration thereof, the object to be delivered has left Baumüller's works or upon notification of readiness for shipping. Where acceptance needs to be performed, the date of acceptance shall be authoritative, except in the case of a justified refusal of acceptance, alternatively, notification of readiness for acceptance. If shipping and/or acceptance/taking delivery of the object to be delivered are delayed for reasons for which the Buyer is responsible, the Buyer shall be charged the costs that have arisen due to the delay, starting one month from notification of readiness for shipping and acceptance.
- (e) Where non-observance of the term of delivery is caused by force majeure (riot/war/terrorist attacks, strike, lockout, exhaustion of raw materials/restriction) or other events that are beyond Baumüller's control, the time for delivery shall be reasonably extended at least by the period of time until the (operational) disruption has been removed. Baumüller shall inform the Buyer of the commencement and cessation of such disruptions without undue delay. In case of lasting operational disruption resulting as a consequence of any of the aforementioned reasons, or in case that Baumüller is not supplied by its suppliers without any fault on the part of Baumüller, Baumüller shall further have the right to withdraw from the contract in full or in part, to the exclusion of any claims for compensation; in cases of non-availability of the service, Baumüller shall give notice thereof without delay; if Baumüller withdraws from the contract in such case, any services already received in performance of the contract shall be mutually restored without delay.
- (f) The Buyer may withdraw from the contract without setting a time-limit if the entire performance by Baumüller becomes finally impossible prior to the passing of the risk. The Buyer may furthermore withdraw from the contract if, in connection with an order, execution of part of the delivery becomes impossible and the Buyer has a legitimate interest in rejecting the partial delivery. Where this is not the case, the Buyer shall pay the contract price attributable to the partial delivery. The same shall apply in case of inability to perform. Clauses 7, 8, 9 shall apply supplementarily. There shall be no claims in excess thereof. If impossibility or inability occurs during default of acceptance on the part of the Buyer, or if the Buyer is solely, or to a major extent, responsible for such circumstances, the Buyer shall remain under an obligation to pay the consideration.
- (g) If Baumüller is in default and the Buyer incurs a loss resulting here from, the Buyer shall be entitled to claim a lump sum compensation for default, which shall amount to 0.5% for each completed week of the delay, but to no more than a total of 5% of the value of that part of the overall delivery which can not be used in time or as provided for by the contract as a result of the delay. If Baumüller is in default and the Buyer grants to Baumüller a reasonable term for performance, taking into account the legal exceptional cases, and if such term is not complied with, the Buyer shall be entitled to rescind the contract within the scope of the legal provisions. Both claims for damages by the Buyer on the ground of a delay in the delivery and claims for damages in lieu of performance which exceed the limits mentioned herein shall be excluded in all cases of delayed delivery, even upon expiration of any term that may have been fixed for the supplier to deliver, with due regard to the restrictions from clauses 7, 8, 9.
- (h) Appropriate partial deliveries shall be permissible and will be invoiced according to their value.

5. Passing of Risk, Acceptance

The risk shall pass to the Buyer as soon as the object to be delivered has left Baumüller's works, even when partial deliveries are made or Baumüller has agreed to provide further services, e.g., assumption of the shipping costs, or supply and installation. If and to the extent that acceptance is to be effected, the latter shall be authoritative for the passing of the risk. It must be carried out immediately by the acceptance date agreed on, alternatively, upon notification by Baumüller of readiness for acceptance. The Buyer must not refuse acceptance in the case of a defect that is **not** material. If the Buyer fails to accept, within a reasonable time-limit specified by Baumüller, the object delivered although the Buyer is obligated to do so, acceptance shall be deemed granted. If shipping/acceptance is delayed or omitted as a result of circumstances not to be attributed to Baumüller, the risk shall pass to the Buyer as from the date of notification of readiness for shipping or acceptance. The Buyer undertakes to take out an insurance policy at its own expense, which appropriately covers the economic risks in particular incident hereto.

6. Reservation of Title

- (a) All objects delivered or to be delivered (goods with title reserved, referred to as "reserved goods" below) shall remain the property of Baumüller until payment of the purchase price has been made in full and until such time as all claims by Baumüller arising from the business relation have been settled.
- (b) The Buyer shall be entitled to process and/or resell the goods in the ordinary course of its business as long as it does not default on the fulfillment of its payment obligations to Baumüller or suspends its payments. In more detail, the following shall apply:
- aa) Processing or transformation of the reserved goods shall be effected for Baumüller as manufacturer within the meaning of Section 950 of BGB [German Civil Code] without binding Baumüller. By processing or transformation of the reserved goods, the Buyer shall not acquire title to the new product as provided in Section 950 of BGB [German Civil Code]. If the reserved goods are processed, mixed, blended, or combined with other objects, Baumüller shall acquire a co-ownership in the new product on a pro rata basis corresponding to the proportion of the invoiced value of the reserved goods to the overall value. The provisions applicable to the reserved goods shall apply mutatis mutandis to the co-ownership interests arising under the foregoing provisions.
- bb) The Buyer hereby assigns to Baumüller all claims arising from the resale or other alienation transactions, along with all ancillary rights, more particularly, proportionally to the extent that the reserved goods have been processed, mixed or blended and Baumüller has acquired co-ownership therein in the amount of the invoiced value, or the goods have otherwise been firmly installed. To the extent that the reserved goods have been processed, mixed, blended, or firmly installed, Baumüller shall be entitled, from such assignment, to a first-ranking undivided share, corresponding to the proportion of the invoiced value of the reserved goods as compared to the invoiced value of the object, in the respective claim arising from the resale. If the reserved goods are sold by the Buyer along with other goods not supplied by Baumüller, the Buyer hereby assigns to Baumüller a first-ranking share in the claim arising from the resale in the amount of the invoiced value of the reserved goods. If the Buyer has sold such claim in connection with true factoring or otherwise economically, the Buyer hereby assigns to Baumüller the accounts receivable from the factor that replace such claim. In case the claim arising from the resale by the Buyer is placed in a current account relationship with its customer, the Buyer hereby assigns to Baumüller its claims arising from such legal relationship/from the settlement relationship in the amount of the invoiced value of the reserved goods.
- cc) Baumüller hereby expressly accepts the aforementioned assignments.

- dd) The Buyer shall be authorized to resell the reserved goods only if it likewise reserves the title to the reserved goods until payment has been made in full of its claim arising from such resale.
- ee) Until revoked by Baumüller, the Buyer shall be authorized to collect the claims assigned to Baumüller. The collection authority shall automatically expire in case of default in payment or suspension of payment on the part of the Buyer. In this event, Baumüller shall be authorized by the Buyer to inform the Buyer's customers of the assignment and to collect the accounts receivable itself.
- The Buyer is under an obligation to provide to Baumüller, on request, an itemized statement of the claims due to the Buyer, including the names and addresses of the customers, the amounts of the individual accounts receivable, invoice dates, etc., and to give to Baumüller all information and documents required for the assertion of the claims assigned, and to permit verification of such information.
- ff) Any and all amounts that are received by the Buyer from assigned claims shall be kept separately by the Buyer on Baumüller's behalf until transfer to Baumüller. They shall be treated as property of Baumüller.
- gg) Any other pledging/transfers of ownership as security of the reserved goods, or assignments for security purposes of the claims assigned shall not be permissible. Baumüller shall be immediately notified of any attachments/other measures of execution by third parties, indicating the attaching creditor.
- (c) In case the value of the securities to which Baumüller is entitled exceeds the total accounts receivable from the Buyer by more than 20%, Baumüller will automatically waive the securities exceeding this amount.
- (d) The Buyer shall store the reserved goods for Baumüller free of charge. The Buyer will insure them to an economically reasonable extent against usual/business-specific risks such as fire, theft and water or the like. The Buyer hereby assigns to Baumüller its claims for compensation to which it is entitled arising from losses of this kind against insurance companies or other third parties liable for damages, in the amount of Baumüller's claim. Baumüller hereby accepts the assignment.
- (e) A petition for institution of insolvency proceedings shall entitle Baumüller to rescind the contract and request immediate return of the object delivered.

7. Liability for Defects as to Quality

In regard to defects as to quality of and defects in title in the goods delivered, Baumüller warrants exclusively as follows, subject to clauses 8, 9:

- (a) In case of defects as to quality, Baumüller will, at its option and free of charge, have to remedy the defect in or make a new delivery of all those parts of the goods delivered/repair all those parts of the services provided which show a defect as to quality within the period of limitation, provided that such defect already existed at the time of the passing of the risk.
- (b) Baumüller shall always first be given the opportunity to perform all removal of defects and replacements which Baumüller deems necessary; this shall be effected in coordination between the parties to the contract; otherwise, Baumüller shall be released from liability and the consequences arising therefrom. Only in urgent cases, in case operating safety is in jeopardy, and for averting excessively great damage, in which cases Baumüller shall be notified immediately, shall the Buyer have the right to remedy the defect itself or have it remedied by third parties, and to claim from Baumüller compensation for the necessary expenses. After an unsuccessful 2nd attempt the rectification of defects shall be basically deemed a failure. This shall not apply if in any individual case the subject matter of the contract is complex engines/motors/controls/systems. In such case, Baumüller shall be entitled to make further attempts at remedying the defect; at least, however, two further rectifications. If the rectification of defects then fails, the Buyer, notwithstanding any other claims for compensation, may rescind the contract if, taking into account the exceptional cases under the law, Baumüller lets a reasonable time-limit set by the Buyer for the rectification of defects and replacement expire fruitlessly. In case of only an insignificant defect, the Buyer shall be merely entitled to claim a reduction of the purchase price. A claim to reduction of the purchase price shall otherwise remain precluded. **All** claims based on defects shall further be excluded in case of damage or loss occurred after the passing of the risk as a result of incorrect or negligent handling, excessive stress, use of unsuitable operating equipment, defective or insufficient construction work, unsuitable construction ground, improper maintenance, chemical, electrochemical or electrical influences, due to an unsuitable place of installation, lack of stability or inappropriate safety in the power supply, and due to influences of nature and the weather or owing to other external influences not provided for under the contract, as well as in the case of non-reproducible software defects. If the Buyer or a third party brought in by the Buyer makes any improper alterations, remedies of defects, or other repair work, no claims shall exist in relation to the consequences resulting therefrom. The same shall apply to any changes of or amendments to the object delivered that have been made without Baumüller's prior approval.
- (c) The Buyer's rights in case of defects shall not exist **unless** Baumüller expressly assumes responsibility for the compatibility of the supplies with third party products, and in the case of malfunctions/failure caused by any defects, of whatever nature, of the third party products not supplied by Baumüller, or the lack of compatibility thereof with the objects delivered.
- (d) The costs arising from the remedy of defects/replacement shall be borne by Baumüller, including shipment and necessary expenses for dismantling and re-installation. Any claims by the Buyer on account of the expenses required for the purpose of subsequent performance shall be excluded to the extent that the expenses increase because the object delivered has later been transferred to a place other than the place of business of the Buyer.
- (e) In the absence of a defect, all costs for subsequent improvement/correction/replacement shall be borne by the Buyer. Baumüller shall then have a right of determination of cost-effectiveness for performance effected under Section 315 et seq. of BGB [German Civil Code].
- (f) Used objects delivered will be supplied to the exclusion of any warranty whatsoever; this shall not apply to the extent that an allegation can be made against Baumüller of having provably acted intentionally or by gross negligence.
- (g) Any other claims for damages/expenses or any further claims against Baumüller by the Buyer on the ground of a defect as to quality shall be excluded, unless otherwise provided for in the present General Business Conditions.

8. Defect in Title/Intellectual Property Rights/Copyrights

Unless otherwise expressly agreed, Baumüller shall be under an obligation to effect the delivery free of third party intellectual property rights/copyrights merely in the country of the place of delivery. To the extent that a third party lodges rightful claims against the Buyer due to infringement of property rights caused by deliveries effected by Baumüller and used as provided for by the contract, Baumüller shall be liable as follows:

- (a) Baumüller will, at its option and expense, either obtain a right of use of the goods delivered/services provided which are concerned, change them such that the property right is not infringed, or exchange the goods delivered/services provided. If Baumüller is **not** in a position to do so on reasonable terms, the Buyer shall be entitled to rescission of the contract or reduction of the purchase price, as provided for by law.
- (b) Baumüller's liability for damages shall be finally governed by clauses 8/9. Such obligations on the part of Baumüller shall **only** exist if the Buyer immediately notifies Baumüller in writing of the claims asserted by the third party and declines to acknowledge an infringement, and if all defense measures remain reserved to Baumüller. If the Buyer discontinues use of the goods delivered for reasons of reduction in damage or for other good cause, the Buyer shall be under an obligation to point out to the third party that such discontinuance of use is **not** associated with an acknowledgment of property right infringement. Baumüller shall be informed accordingly without delay.
- (c) Any claims by the Buyer shall be **excluded** to the extent that the Buyer is responsible for the property right infringement. Any claims by the Buyer shall further be excluded to the extent that the property right infringement is caused by particular specifications of the Buyer, by an application that could not be foreseen by Baumüller, or because the goods delivered have been changed by the Buyer or are used together with products not supplied by Baumüller.
- (d) In the case of property right infringements/other defects in title the claims by the Buyer as arranged for above shall exist; the provisions of clauses 7, 8 shall apply supplementary.
- (e) Any further claims by the Buyer for damages/compensation for expenses/claims other than those provided for in this clause shall be excluded.

9. Liability (Damages/Compensation for Expenses)

(a) The provisions of clauses 7, 8 shall be applicable, to the exclusion of any further claims by the Buyer, if the object delivered can **not** be used by the Buyer according to the contract through Baumüller's fault as a result of a failure to execute, or defective execution of, suggestions made/consultations held prior or subsequent to formation of the contract, or due to breach of other accessory duties under the contract, in particular instructions for operation/maintenance of the object delivered.

Baumüller shall not be liable for any damage **not** caused to the object of the delivery itself, nor for any claims for damages/claims for compensation of expenses, for whatever legal ground, in particular based on default, Sections 280, 286 of BGB [German Civil Code], impossibility, other breach of duty, tort. This shall not apply if the Buyer's claim is based on

- aa) loss of life, bodily injury or health injury
- bb) intent or gross negligence by the owner/executives or officers
- cc) a culpable breach of material contractual obligations (cardinal duties) by employees who are **not** executives or officers
- dd) fraudulent concealment of defects or warranted absence of defects
- ee) defects of the object delivered to the extent that liability is compulsory under the Product Liability Law/general product liability for personal injury/damage to property. In case of breach of a material contractual obligation (cardinal duty) based on simple negligence, the claim for damages against Baumüller shall be limited to liquidated damages for a loss which typically arises and would be foreseen. These damages shall normally be the contract value as a maximum.
- (b) In case of a breach of duty which does **not** involve a defect in the product purchased, the Buyer may rescind the contract only if Baumüller or its legal representatives or vicarious agents are responsible for the breach of duty and the statutory requirements for rescission are satisfied. Any claim for damages shall be excluded.
- (c) In view of the fact that liability for indirect and consequential damage is excluded, the Buyer has to obtain a product/manufacture's liability insurance appropriately covering the economic risks, and has to provide written proof thereof to Baumüller.

10. Statute of Limitations

Any claims by the Buyer against Baumüller, in particular based on defects, shall become statute-barred after 12 months from delivery, otherwise as from the legal fiction of acceptance (Section 640 (I) of BGB [German Civil Code]), from notification of readiness for delivery, notification of readiness for acceptance, or from the Buyer's default in taking delivery. This shall not apply if the object delivered is a product which in accordance with its usual application has been used for a building and has caused the defectiveness thereof, or in the case of defects of a building under Sections 438 (I) 2, 634 a (I) 2 of BGB [German Civil Code], or if the defect is caused by an intentional breach of duty by Baumüller or its legal representatives or vicarious agents.

11. Notices of Defects

(a) The Buyer shall examine the goods delivered and services provided **immediately** upon delivery and shall give notice of any apparent defects without delay, but at the latest 14 days from receipt of the delivery. If the Buyer **fails** to notify a defect in writing within this period of time, the objects delivered shall be deemed to be **approved**. Any non-obvious defects must be notified in writing upon discovery **without delay**, but at the latest 14 days from discovery. If the Buyer **fails** to notify the defect discovered

in writing within this period of time, the objects delivered shall be deemed to be **approved**.

- (b) The Buyer shall allow Baumüller an appropriate examination of any **notified** defects and shall, without this requiring a separate request, make available to Baumüller, free of charge, all necessary technical information, in particular all test/process/load protocols and test reports. If the Buyer fails to do so, any defects of the objects delivered shall be deemed **not** notified and the objects delivered shall be deemed to be **approved**. If the Buyer makes any changes to the objects delivered by any interference, of whatever nature, which has not previously been approved by Baumüller, or if the Buyer performs any repair work without Baumüller's prior approval, the Buyer shall lose its claims based on defects.

12. Payments

- (a) Invoices shall be payable in cash without any deduction at the points in time as agreed under the contract, at the latest within 30 days from the due date and receipt of the invoice, an equivalent payment schedule or receipt of the delivery or service. Upon expiration of such 30 days, a default will occur automatically. Invoices for repair and testing work shall be payable immediately in cash without any deduction; otherwise, the above provision shall apply supplementarily.
- (b) In case of delayed payment, in particular in case of the Buyer's default in payment, interest shall be due at 8% above the base interest rate fixed by the European Central Bank in Frankfurt/Germany valid at the time, without any separate proof being required. The interest on default in payment shall be due immediately. Assertion by Baumüller of any further **damage** shall not be excluded.
- (c) The Buyer may offset only against such claims which are uncontested or have become res judicata. The same shall apply to an exercise of rights of retention.
- (d) In case of the Buyer's default with a payment, all accounts receivable by Baumüller from the Buyer shall become due immediately.
- (e) Notwithstanding Sections 366 et seq. of BGB [German Civil Code], Baumüller shall be entitled to appropriate any payments made by the Buyer to such outstanding debts of the Buyer as Baumüller may think fit.

13. Property Rights/Copyrights/Use of Software

- (a) Where the goods delivered include software, the Buyer is granted a **non-exclusive** right to install and to use the same, including the documentation thereof, on the respective objects delivered and any associated technical equipment.
- (b) The rights of use shall be limited in time to the period during which the Buyer is in possession, as authorized under the contract, of the object delivered. The rights of use shall automatically lapse upon termination of the use. The rights of use shall be limited to the objects delivered, technical apparatus, operating systems on which they are employed according to the contract/specification. The Buyer shall be permitted to assign the rights of use only in case of a simultaneous resale of the objects delivered, in which case the present conditions shall be passed on accordingly. The Buyer's own rights of use will then have ceased to exist.
- (c) The Buyer may duplicate, revise or translate the software or convert the software from the object language into the source code only to the extent that this is permitted by law (Section 69 a et seq. of UrhG [German Law on Copyrights and Related Property Rights]). The Buyer undertakes not to remove any manufacturer's specifications, in particular copyright notes, nor to change same without Baumüller's prior explicit approval. The Buyer is not permitted to extend the license according to location/systems employed/workstations/machines/types of machines, nor to grant rights of use of whatever kind or sublicenses. An extension of the license will be permitted by Baumüller exclusively in return for a separate remuneration to be agreed in writing.
- (d) In case of violation of these provisions by the Buyer or a successor in law, Baumüller may demand payment of a contractual penalty for each individual case of contravention, to the exclusion of the plea of connection with any previous act of contravention, notwithstanding the assertion of higher claims. Such penalty shall amount to at least € 5,000.00 for each individual case, unless the benefit from use/loss of license fee can be proven to be higher or lower.

14. Applicable Law/Place of Performance and Jurisdiction

- (a) All legal relations between Baumüller and the Buyer arising from and in connection with the performance of the delivery in accordance with the present contract shall be governed by the laws of the Federal Republic of Germany. An application of the provisions of the United Nations Sales Convention (CISG) is hereby expressly excluded by the parties.
- (b) Baumüller's current principal place of business shall be agreed to be the place of delivery and the place of payment. In case of any litigation arising from or in connection with the performance of this contract, or from or in connection with payments made by checks/bills of exchange, the courts at the principal place of business of Baumüller shall have exclusive jurisdiction. Notwithstanding the foregoing, Baumüller may choose to file suit at the respective principal place of business of the Buyer.

15. Miscellaneous

The parties hereby agree on written form for any and all agreements to be entered into. Any **verbal** (diverging) collateral agreements do not exist. They shall be effective only if confirmed in writing in each individual case. The requirement of written form shall also apply to the cancellation of this provision. If the Buyer wishes the objects to be delivered to exhibit any specific properties or features of particular importance to the Buyer, the Buyer shall have to point this out to Baumüller separately. There shall be no defect within the meaning of these arrangements if the Buyer failed to inform Baumüller accordingly and the properties or features concerned can **not** be expected by the Buyer from the kind or nature of the product purchased.

In the event that the contract also/only involves repairs, the following shall apply supplementary:

16. Lien in case of Repairs/Reservation of Title

- (a) A binding estimate of costs may be requested prior to the repair. Where no repair contract is then entered into, the expenses incurred in connection with preparing the cost estimate shall have to be reimbursed. If in the course of the repair the remuneration specified in the cost estimate is exceeded by more than 20%, the approval thereof by both parties to the contract shall be obtained. Any services already provided shall be paid for.
- (b) In the case of repairs, Baumüller shall be entitled to a right of retention based on its claims arising out of the order, as well as to a contractual lien on the objects of which it has obtained possession owing to the repair order.
- (c) If, within 6 weeks from completion of the repair and notification thereof, any objects handed over are not picked up or, where such objects have been shipped, are not accepted, Baumüller shall not assume any liability whatsoever for any loss or damage, of whatever nature; this shall not apply in the case of intent or gross negligence. Upon expiration of such 6 weeks' term, Baumüller shall be entitled, subsequent to a prior written warning, specifying the amount of money on account of which a private sale is to take place, to realize the object handed in by sale in the open market after one month from the warning, in accordance with the legal provisions relating to contractual lien. The warning of the enforcement of the lien may be dispensed with if the whereabouts of the customer is unknown.

In the event that installations, assembly and acceptance are also agreed, the following shall apply supplementary:

17. Installation and Assembly

- (a) Objects to be delivered will be inspected in the works of Baumüller for their fitness for acceptance. The cost of such inspection shall be borne by the Buyer. If the Buyer fails to inspect the objects to be delivered, they shall be deemed to be delivered and approved in conformity with the contract upon leaving Baumüller's works.
- (b) The Buyer shall be under an obligation to accept deliveries by Baumüller immediately upon being notified of the readiness for acceptance thereof. Any non-material defects shall not constitute a ground for refusal of acceptance. If acceptance is refused on the ground of any non-material defects, the Buyer's failure to accept the completed work within a reasonable time-limit specified by Baumüller shall be tantamount to acceptance. If the Buyer fails to declare, in writing within a period of 7 days from notification by Baumüller of the readiness for acceptance or from receipt of the performance under the contract, that and why acceptance is refused, giving detailed and verifiable reasons therefor, acceptance shall also be deemed to be declared.
- (c) Performance under the contract shall further be deemed to be accepted as soon as the product delivered is put into operation by the Buyer itself or by a third party on instruction from the Buyer to an extent exceeding the functional test necessary for effecting acceptance.
- (d) The individuals named by Baumüller and by the Buyer shall participate in the acceptance. The result of the functional test/acceptance shall be recorded in a protocol to be signed by both parties, taking into consideration the technical specification.
- (e) The Buyer shall take over, arrange for and provide in time and at its own expense:
any and all earthwork, construction and other supplementary work foreign to the industry, including the specialists and assistants, building materials and tooling required therefor, as well as the requisite articles, materials and supplies necessary for assembly and initial operation, such as scaffolds, cranes, elevators and hoisting devices and other devices and apparatus, fuels and lubricants as well as power and water at the place where needed, including the supply points, heating and lighting and, at the place of assembly, suitable and dry rooms of sufficient size which can be locked for the storage of machine parts, apparatus and equipment, materials, tools and the like, and appropriate working and recreation rooms for the fitting staff, including sanitary facilities which are adequate under the circumstances; otherwise, the Buyer shall take those measures on the construction site for the protection of Baumüller's and the fitting staff's property and possessions which it would usually take to protect its own property and possessions, as well as safety clothing, and protective devices which are required as a result of the assembly and are in compliance with the regulations for the prevention of accidents.
- (f) Prior to commencement of assembly and fitting, the Buyer shall, with no separate request required, provide the necessary data and particulars about the location of power cables, gas conduits, water pipes and similar facilities that are guided hidden from view, as well as the required structural and statics data.
- (g) Prior to commencement of installation or assembly, the contributions and objects required for work to be started must be located at the site of installation/assembly and all preparatory work prior to the beginning of erection or mounting must have progressed so far that installation or assembly can be started as agreed and performed without interruption. All access roads/driveways and the place of installation or assembly must have been made level and cleared.
- (h) In case of a delay in the installation, assembly or initial operation caused by circumstances for which Baumüller is not responsible, the Buyer shall bear the costs resulting from the waiting times and any necessary additional travel expenses incurred by the fitting staff. The Buyer shall without delay make out a certificate to Baumüller/its fitting staff relating to the hours of work of the fitting staff and termination of the installation, assembly or initial operation, and such certification shall be handed over to Baumüller.
- (i) Baumüller shall not be liable for the work performed by the fitting staff to the extent that such work is **not** directly associated with the delivery and the installation/assembly/acceptance. No trial or test runs will be carried out in relation to any plants/systems/machines/components **not** supplied by Baumüller.