

I. General

1. Our general terms and conditions of delivery and payment (referred to hereinafter as T&Cs) only apply to our commercial relationships with corporate entities, legal persons under public law or special funds under public law.

According to § 14 BGB a corporate entity is a natural or legal person or a legitimate partnership that is acting within the framework of its commercial or independent professional activity when concluding a legal transaction.

We are referred to in our T&Cs as the supplier.

2. All (also future) deliveries and services including advice, recommendations and other ancillary services take place exclusively on the basis of the following general terms and conditions of delivery and payment unless these have been amended or excluded with the express written permission of the supplier. The supplier expressly rejects any contradicting conditions of the customer; these shall not be recognised even if the supplier does not reject these once again following receipt.

3. All declarations of intent and other legal actions on the part of the sales personnel of the supplier must be confirmed by the company management in writing in order to take effect. The supplier reserves the right to modify design details as well as the dimensions, weights and other characteristics of his delivery objects in comparison with the sales documentation currently in circulation, insofar as these modifications do not negatively affect the rightful interests of the customer.

4. All details such as dimensions, weights, illustrations, descriptions, assembly sketches and drawings, price lists, other printed materials or documents of our Bär Cargolift WebShop or website are only approximate, although to the best of our knowledge. As such, these are not binding for the supplier.

The supplier reserves the property and copyrights to all models and drawings.

II. Prices

1. Prices are quoted ex works and are always subject to the applicable VAT rate, as well as freight, packaging and set-up costs.

2. In the event of retrospective drawing and specification changes by the customer, or additional or amended acceptance or classification specifications, the supplier is entitled to make appropriate adjustments to the price.

3. The supplier reserves the right to increase the agreed price in relation to quantities that have not yet been delivered, if a change in the price of the raw material and/or financial climate should arise, which results in the cost of production and/or the procurement of the requisite products rising after the time point at which the price agreements were concluded.

In this case the customer is entitled to withdraw from the corresponding orders within a period of 4 weeks of notification of the price increase. Furthermore, the supplier is also entitled to increase the agreed price if a delivery time extension should arise for one of the reasons cited under IV. 4. and 6., if the material or execution should change because the documents and/or instructions issued to the supplier by the customer should prove to be incomplete or an inaccurate reflection of the actual situation, or the supplier does not receive the information that he requires in order to execute the order in good time, or if the customer should retrospectively change this and the delivery should be delayed as a result of this.

III. Payment conditions

1. Payment shall take place under the agreed conditions without any deductions, unless otherwise agreed. The list prices valid of the day of the delivery shall apply to products and spare parts. In the case of custom products and repairs, the calculation rates applicable on the day of delivery shall apply to billing. Bills of exchange shall only be accepted following prior agreement and only on account of payment as well as subject to the possibility of discounting. If payment is made by cheque or bill of exchange then the customer shall bear the costs of discounting and collection.

2. The supplier is entitled to use these payments for other receivables, also contrary to the conditions of the customer. The customer is not entitled to withhold or offset payments. This also applies in the event of complaints and defects relating to insignificant parts of the delivery, unless the receivables or rights of the customer are undisputed, legally asserted or ready for decision. If the customer fails to observe the agreed payment dates or the customer experiences a significant worsening of their funds situation (e.g. foreclosure, suspension of payments, over-indebtedness, out-of-court settlement, liquidation, complete or partial sale of the company, pledging or transfer by way of security of goods, surrendering or transferral of receivables) then the supplier is entitled to opt either to exercise his rights of retention or to demand that the customer grant alternative appropriate security rights. In this case the customer is no longer entitled to sell any of the goods or the respective scope of supply belonging solely or jointly to the supplier.

3. All of the supplier's receivables are payable with immediate effect and without regard to any discounted bills of exchange - unless expressly agreed otherwise. Insofar as the customer has transferred his receivables to the supplier within the framework of the agreed retention of title, the customer shall hold in separate safe custody any payments accepted on behalf of the supplier, and shall relinquish to him his bank credit to the corresponding value. The customer shall pass on, from the funds received, the amounts owing according to his payment obligations with immediate effect. In the event of payment arrears, the supplier is entitled to demand late payment interest amounting to the average minimum interest charges and commissions charged by the major banks for corresponding monetary credit.

The supplier reserves the right to validate claims for further damages. Likewise, the customer is entitled to prove damages of a lesser value. Furthermore, in the event of payment arrears the supplier is entitled to withdraw from the contract or demand compensation due to a failure to fulfil contractual obligations, without providing a period of grace and without declaring that service acceptance was rejected.

IV. Delivery period

1. The delivery period commences when the order confirmation is sent, although not before the customer has provided the documents, approvals, releases and any agreed deposit payments that may be due from the customer.
2. In the event of any modifications and/or technical executions being agreed after contractual agreement, the originally agreed delivery period shall be appropriately extended according to the agreed scope of the modifications. If vehicles or chassis are not delivered by the agreed date then the delivery and assembly periods shall extend by the duration of the delivery delay as a minimum, plus an appropriate further extension period of up to four weeks.
3. The delivery period has been observed if the delivery object has left the factory or notification of readiness for dispatch has been issued on or before the deadline.
4. The delivery period shall extend to an appropriate degree where measures arise due to industrial disputes, unforeseeable events that lie outside the sphere of influence of the supplier, as well as any events that have a verifiable effect on the completion of the respective delivery object or its readiness for delivery ex works. This also applies to such events arising in relation to a sub-supplier.
The supplier is not responsible for such circumstances, also if he was already delayed. The customer shall receive corresponding notification, in particular regarding the start and end of delivery interruptions, immediately upon onset of the same.
5. In the event of a delay in the delivery at the request of the customer, any costs that may arise shall be billed to him as follows:
 - a) if the goods are stored at the supplier's factory, 0.5% of the invoice value per month in storage;
 - b) if the goods are stored externally then the value of the costs as invoiced 30 days after the customer was informed of readiness for dispatch.

However, if the supplier specifies a period of grace and this passes without success then the supplier is entitled to utilise the delivery object as he sees fit and subsequently supply to the customer following an appropriate extension period.

6. Compliance with the delivery period presupposes fulfilment of all contractual obligations on the part of the customer, also arising from previous commercial transactions.

V. Transfer of risk

1. When the delivery object is handed over to the customer, persons authorised by the same, a courier or a freight forwarder then the risk also transfers to the customer; this also applies in the case of part deliveries or if the supplier has taken on additional services such as transport, export or installation.
2. If the supplier collects or delivers vehicles then this service shall be provided at the cost and risk of the customer, unless alternative agreements have been reached. If the delivery or transport is delayed for reasons that are not attributable to the supplier then the price and performance risk transfer to the customer on the day upon which the goods are ready for dispatch.

VI. Extended and expanded retention of title

1. The supplier reserves the property rights to the delivery object (goods subject to title retention) until all payments arising from the commercial relationship have been settled by the customer. The retention of title also encompasses the recognised balance, insofar as receivables are booked against the customer through ongoing billing (current account reservation). Reference is made to the rights of the customer per point 6.
2. In the event of contract infringing conduct on the part of the customer - in particular if payments are in arrears - the supplier is entitled to take back the delivery object; the customer is obligated to relinquish this. This also applies if the delivery object has been integrated with another object, insofar as no legally independent new product has resulted from this action. Returning the delivery object does not constitute withdrawal from the contract, unless the supplier has expressly stated this in writing.
3. A pledging of the delivery object always constitutes withdrawal from the contract. The customer must inform us of pledges or any other actions on the part of third parties immediately, in order that we can initiate proceedings per § 771 ZPO. Insofar as the third party is not in a position to reimburse the legal and out-of-court costs of the supplier (plaintiff) for proceedings per § 771 ZPO, the customer shall be responsible for this loss as incurred by the supplier.
4. The customer is entitled to sell the delivery object on within the framework of a conventional business transaction, if he is not in arrears. However, the customer hereby transfers to the supplier in advance all receivables amounting to the value of the final invoice, including VAT, as fall payable to him as a result of selling the delivery object on to his respective customers or third parties, irrespective of whether the goods subject to title retention are sold following processing or further handling.
The customer is entitled to collect these receivables following their transferral. This does not affect the authority of the supplier to collect the receivables himself. Insofar as the customer meets with his payment obligations in an orderly manner and does not fall into payment arrears, the supplier shall not collect the receivables himself.

However, if the customer himself experiences a situation whereby payment arrears may arise, or if such a situation has indeed arisen, the supplier is entitled to demand at any time that the customer inform him of the transferred receivables and of the respective debtor, and that the customer provide him with all relevant documents and all information regarding the debtor as may be required for collection purposes, and that he disclose the transfer to the debtor (third party) through a suitable means of notification.

5. The processing and further handling of the delivery object by the customer is always carried out on behalf of the supplier in the sense of § 950 BGB. If the delivery object is processed in conjunction with other objects that do not belong to the supplier then we shall acquire co-ownership of the new object proportional to the value of the delivery object in relation to the other objects processed at the time of their processing. The object resulting from this processing shall be subject to the same provisions as apply to goods subject to title retention.

6. If the delivery object has been permanently combined with other objects that do not belong to the supplier such that his otherwise applicable special rights cannot be exercised then the supplier acquires co-ownership of the new object proportional to the value of the delivery object in relation to the other connected objects at the time of their connection. If connection takes place in such a way that the object of the customer can be considered the primary object then it is deemed to have been agreed that the customer transfers to the supplier at this time any expectancy rights to which he is entitled, as well as proportional co-ownership. In the event of a mixing of the delivery object with other objects that do not belong to the supplier, the aforementioned provisions apply accordingly. In all such instances the customer shall grant the supplier sole or co-ownership.

VII. Warranty with delivery defects

The supplier shall be liable for delivery defects, including the failure to deliver any guaranteed characteristics, according to the following provisions:

1. The customer is required to check the delivery object immediately after delivery by the supplier for defects, quantity, quality and assured characteristics. Any discernible defects must be reported to the supplier with immediate effect. Otherwise the warranty shall be voided in this regard. The same applies to any defects discovered at a later time, which must be reported to the supplier immediately upon detection.

2. All delivery objects may be repaired or replaced with new deliveries free of charge at the discretion of the supplier within a period of 2 years (with spare parts business 2 years) of commissioning, where defects arise due to conditions that existed prior to the transfer of risk - in particular due to a deficient design, material defects or deficient execution - which render the delivery objects unusable or usable to a significantly limited degree. Replaced parts become the property of the supplier.

3. In the case of essential third-party products pertaining to the delivery object, the supplier's liability shall be limited to the transfer of those rights that arise in his favour in relation to the supplier of the third-party products, insofar as the supplier is not culpable (for selection) himself for the installation or use of such parts. If validation of the transferred claims is unsuccessful then the customer is entitled to a discount and to withdrawal according to the legal regulations.

4. In order for the supplier to carry out all apparently necessary repairs and any replacement deliveries at his discretion, following prior agreement regarding timing the customer must provide the supplier with sufficient time and must also hand the delivery object over to the supplier at his factory or to a workshop specified by the same, insofar as the delivery object is installed in a vehicle; a failure to do so releases the supplier from his liability for defects. Only in urgent cases where a danger to operational safety exists and in order to prevent disproportionately greater damage is the customer entitled to remedy the defect himself or instruct a specialist third party to do so and thereafter demand reimbursement of his essential costs - whereby the supplier must be informed of this; this also applies where the supplier is delayed in remedying the rectification of defects.

The warranty applicable to replacement parts and repairs shall be valid for three months, although for no less than the original warranty period still remaining on the delivery object.

5. Any unprofessional modifications or servicing works carried out by the customer or a third party without the prior approval of the supplier release the supplier from any liability for the consequences of this. Liability for damages that arise following the unintended use of the delivery object is also excluded. Unintended use also includes the use of the delivery object with weights exceeding the specified permissible weight. The supplier shall not be liable for any damages due to overloading.

VIII. Limitation of liability

In the event of minor infringements of insignificant contract obligations the supplier shall not be liable to the customer.

In all other instances the supplier's liability for minor infringements of contract obligations shall be limited to contract-typical, foreseeable and average damages applicable to the type of delivery object. This also applies to minor infringements of contract obligations by legal representatives and vicarious agents of the supplier.

The customer's claims for damages due to a defect fall time expired one year after the delivery object is delivered.

This does not apply if the supplier is shown to have acted with malice or gross negligence, or if the supplier is responsible for damage to health, personal injury or the loss of the life of the customer.

The aforementioned liability limitations do not apply if the supplier is responsible for damage to health, personal injury or the loss of the life of the customer. Furthermore, the aforementioned liability limitations do not apply to claims under the product liability law.

Furthermore, the aforementioned liability limitations do not apply where the supplier experiences reasonable incapability or reasonable impossibility of performance.

Insofar as the supplier's liability is excluded or limited, this also applies to the personal liability of his legal representatives, employees, workers, staff and vicarious agents.

IX. Software use

1. If the scope of supply includes software then the customer is granted a non-exclusive right of use to the software supplied, including its documentation, for the specified and thereby agreed number of users. If use of the software has been time-restricted by the supplier then the customer is not entitled to use the software once this period expires.
2. Insofar as the software is intended for use with the control unit of the BÄR Cargolift (control software), it is only provided for use in controlling the respective BÄR Cargolift supplied. Any further use of the control software is prohibited. It is only permissible to pass on the control software to third parties within the framework of passing on the BÄR Cargolift.
3. A failure to comply with the installation conditions and installation instructions or a modification for the software or control software leads to an immediate and permanent loss of any related warranty and damage entitlements on the part of the customer.
4. The customer shall store the original data carriers provided in a secure location that is inaccessible to unauthorised third parties, and shall expressly instruct his employees to comply with these contractual conditions as well as the copyright regulations.
5. It is only permissible to duplicate the software insofar as this is necessary for its contract-compliant use. The customer is only permitted to make the necessary number of back-up copies of the software according to the latest engineering practice. Back-up copies on mobile data carriers must be marked as such, and labelled with the copyright notice per the original data carrier.
6. The customer is only authorised to make modifications, expansions and other revisions to the software in the sense of § 69c no. 2 UrhG to the essential extent permissible according to the law. The customer shall grant the supplier two attempts to remedy a defect before he himself or a third party does so.

7. The customer is only entitled to decompress the software according to the restrictions of § 69e UrhG and only if the supplier has not provided the necessary data and/or information following a written request to do so and after a suitable period of grace, in order to establish interoperability with other hardware and software.

8. All rights to the objects of the contract (and all copies produced by the customer) - in particular copyrights, rights to inventions and other technical protective rights - are held by the supplier exclusively. This also applies to the processing of the contract objects by the supplier. The customer's ownership of the respective data carriers remains unaffected by this.

9. The customer is not entitled to modify or remove copyright notices, labels and/or control numbers or marks of the supplier. If the customer modifies or processes the contract objects then these marks and labels must be transferred to the contract object in the amended version.

10. The customer is only entitled to pass the contract objects on to a third party in full and with complete and final relinquishment of his own use of the contract objects. The temporary or partial handover of use to a third party is prohibited, regardless of whether the contract objects are handed over in physical or non-physical form. The same applies to a handover free of charge.

11. The customer shall grant the supplier access to the contract objects for trouble-shooting and fault-finding, directly and/or via remote data transfer at the customer's discretion. The supplier is entitled to check whether the contract objects are being used in accordance with the provisions of this contract. For this purpose he is entitled to request information from the customer, in particular regarding the time frame and scope of use of the contract objects, as well as access to the books and documents, and the hardware and software of the customer. The supplier shall be granted access to the commercial premises of the customer during standard office hours for this purpose.

12. The customer shall implement appropriate precautions to safeguard against the software failing to function fully or partially (e.g. daily data back-ups, fault diagnostics, regular checking of the data processing results). Unless the customer expressly states otherwise in advance the supplier may assume that all of the customer's data, that the supplier may come into contact with, has been backed up. The customer shall bear the disadvantages and costs of an infringement of this obligation.

X. Place of fulfilment, jurisdiction

1. The place of fulfilment for all obligations arising from this contract is the supplier's head office. The exclusive place of jurisdiction is the location of supplier's head office, unless another exclusive legal jurisdiction applies. With factual jurisdiction of the regional courts, it is agreed that the municipal court shall preside at the supplier's discretion.

2. German law is agreed. Application of the Uniform Laws on the Purchase and Sale of Goods is excluded.