

General Terms of Delivery and Performance to be applied in the business connections of the company balticFuelCells GmbH (in the following called “BFC”) with companies (in the following called the “Customer”) in the sense of § 14 of German civil code

§ 1 Field of application

1. These terms are valid for the business connections between BFC and its Customers, no matter if their registered office is in the Federal Republic of Germany or abroad. These terms are valid subject to other agreements in connection with other future operations between the parties even if these have been expressly not otherwise agreed upon once more.
2. Only these General Terms of Delivery and Performance shall be valid. General Terms and Conditions of the Customer shall be valid with the exclusive consent of BFC in writing.
3. Individual agreements take priority over the General Terms and Conditions (§ 305b of German civil code).

§ 2 Subject, prices, certifications, capability, delay

1. Subject of the Contract is the Performance Subject described by BFC in the Letter of Offer. The state of the Subject defined in this Performance Description fully and finally defines its qualities (especially, public expressions of the Seller, the Manufacturer as well as their assistants or third parties do not include any descriptions of the Delivery Subject which amend or change the Performance Description.)
2. Regularly, the Performance Subject is a part product in the sense of the Product Liability Law. Scope of delivery as well as delivery dates result exclusively from the order confirmation. If there is no such confirmation the statements in the written offer shall be decisive.
3. The prices depend on the regulations defined in the Letter of Offer. These are fixed prices in Euro unless not otherwise agreed upon between BFC and the Customer. The prices are meant to be plus valid value added tax. Packaging, shipping, transport insurance and customs duties are not included in the BFC offers and shall be to the account of the Customer.
4. Certification services which are rendered upon the Customer’s request in addition to the existing services for the product respectively described in the offer, as well as the related costs, shall be rendered only based upon a special written agreement and shall be separately billed to the Customer. To the extent that, through the additional certification measures, the timeframes specified in the offer are extended, § 2 Clause 6 of these General Business Terms and Conditions shall apply accordingly.
5. BFC shall not take over any procurement risk. It is entitled to rescind from the Contract as far as it does not obtain, despite of the previous conclusion of an identical Purchase Contract from its side, the Delivery Subject or does not obtain the materials necessary for the manufacturing of the Delivery Subject; BFC’s responsibility for intent or negligence remains unaffected. BFC shall immediately inform the Buyer about the delayed availability of the delivery and, in case of its intention to rescind, immediately make use of its right of rescission. In case of rescission, BFC shall immediately repay the Buyer the respective counter performances.

6. In case of delay in delivery due to force majeure and legal industrial action BFC shall be entitled to extend the delivery time stated in the offer letter respectively. If the delivery time cannot be complied with following circumstances BFC cannot influence the delivery time shall be reasonably extended. In such a case BFC shall immediately inform the Customer. If the impeding circumstances continue to exist more than one month of the agreed delivery time both parties shall have the right to rescind from the contract. The rescission declaration shall be in writing. Further claims due to delay in delivery which is not in the responsibility of BFC are excluded.
7. In case of delivery delay BFC is responsible for the Customer is entitled to request repayment of the resulting damage, insofar as the risk typical for the Contract has been realised or was foreseeable by both Parties on conclusion of the Contract.
8. Part deliveries shall be permissible if they are reasonable to the Customer.

§ 3 Place of performance, compensation, payment timeframe, passing risk, delay of payments, invoicing

1. Place of performance is the registered office of BFC. Delivery is agreed to be “ex works” provided that nothing otherwise is resulting from the Confirmation of Offer.
2. The fee shall be due and payable in full scope within 14 days after the invoicing date with no deductions whereby, in this regard, the point in time that BFC receives the payment shall be prevailing. If payments are made by cheque, the Customer shall be responsible for ensuring that the cheque is promptly submitted subject to adherence to value dates. Any delays in the crediting of the cheque for which BFC is not responsible shall be the responsibility of the Customer who, in the event that the payment timeframe is not adhered to, shall be charged payment default interest in accordance with § 3 Clause 4. If payment is made by cheque, an additional fee in the amount of 0.2 % of the invoiced amount shall be collected. With regards to the transfer of risk, express reference is hereby made to the provisions of §§ 446 and 447 BGB [German Civil Code].
3. Without any further declarations upon the part of the Seller being required, the Customer shall enter into payment default on the day after the payment due date if the Customer has not paid. If the Customer enters into payment default, then BFC shall be entitled to charge payment default interest in the amount of 8 % above the base lending rate based upon the valuated payment claim (§ 288 Para. 2 BGB).
4. In case of defects the Customer has not the right of retention unless the delivery is obviously defective or the Customer has obviously the right to reject taking over the work respectively; in such a case the Customer has the right of retention only if the retained amount is in reasonable ratio with the defects and the anticipated costs of subsequent performance (especially of a defect removal). The Customer shall not have the right to set up claims and rights due to faults unless the same has effected due payments and if the amount due (including possibly effected payments) is not in a reasonable ration with the value of the – defective – delivery or work respectively.
5. The Customer may only offset against such claims that have been undisputedly and legally discovered.
6. The customer agrees that his invoice will be sent to him electronically by e-mail. The invoice is valid without a signature.

The customer shall ensure on the recipient's side that all electronic deliveries of the invoice by e-mail can be properly delivered to the e-mail address provided by the customer and that technical equipment such as filter programs or firewalls can be adapted accordingly.

Any automated electronic replies (e.g. notes of absence) cannot be taken into account and do not prevent valid delivery.

The customer must notify us immediately in writing and in a legally valid manner of any change to the e-mail address to which the invoice is to be sent. Invoices sent to the last e-mail address provided by the customer shall be deemed to have been received by the customer if the customer has not notified us of a change of e-mail address.

The customer may revoke participation in the electronic sending of invoices by e-mail in writing at any time. After receipt and processing of the written revocation, the customer will in future receive invoices by post to the last known postal address. The supplier reserves the right to charge a handling fee for postal delivery.

§ 4 Extended reservation of title

1. The Delivery Subject shall remain the property of BFC until fulfilment of all claims it is entitled to out of the business connection against the Customer.
2. During the existence of the reservation of title hypothecating or hedging assignment is forbidden for the Customer. Resale is permitted only to resellers in regular errand and that only under the condition of the effected payment of the equivalent amount of the Delivery Subject to the Principal. The Customer shall also agree with the Purchaser that the Purchaser obtains ownership only after the said payment.
3. The Customer is permitted to process the Delivery Subject or to mix or to blend it with other subject ("New Product"). In case of processing with other subjects not belonging to BFC the same is entitled to joint ownership in connection with the new product to the amount of the portion resulting from the ratio of the value of the processed, mixed or blended Delivery Subject to the value of the remaining processed product at the time of processing. If the Customer obtains the sole ownership of the new product BFC and the Customer agree upon the fact that the Customer grant to BFC joint ownership of the New Product in the ratio of the value of the processed Delivery Subject to the remaining processed product at the time of processing.
4. In case of neglect of Customer's duty, especially payment delay, BFC is entitled, even without any statement of a fixed period, to require the return of the Delivery Subject or the new product respectively and/or to rescind from the Contract; the Customer is then obliged to return the Delivery Subject or the New Product respectively.

§ 5 Warranty, obligation to claim, liability

1. BFC guarantees the application of scientific care as well as the compliance with generally recognised technical and industrial rules. BFC guarantees that the Performance Subject has the qualities stated in the Letter of Offer and is free of defects respectively, i.e., is suitable for the use guaranteed in the Contract or for general use and also has qualities being normal in case of identical items and being expected by the Buyer according to the kind of Subject at the time of handing over. As for the rest, the provisions of § 434, Sections 2 and 3 of German civil code shall apply. BFC shall provide no warranty for products or product cases which are reworked, opened or otherwise altered after being turned over to the Customer without the written agreement of BFC.

This also applies to defects or failures of goods or products that have been delivered to the customer, that have resulted from:

- faulty or improper assembly and placing into operation (i.e. deviating from the respective product assembly guidelines or user manual),
 - external sources (e.g. water or chemicals), or
 - lack of care in handling the goods/product (e.g. from physical strain applied to the goods/product).
2. The Customer is obliged to immediately examine the Performance Subject and to report visible defects in writing, at the latest, within five working days from obtaining the product; otherwise, the assertion of warranty claims shall be excluded. The defects shall be detailed as much as possible for the Customer. The Customer has the full burden of proof for all claims, especially for the defect itself, for the time of discovery of the defect as well as the reclamation in good time. As for the rest, the provisions of § 377, Sections 2 to 5, of Commercial Code shall apply.
 3. If the Performance Subject sold by BFC proves to be defective at the time of risk passing BFC has the right to repair the Subject by way of subsequent performance, at its choice, by repair or replacement – also several times depending on nature and scope of the defect. The costs for subsequent performance, especially transportation, working and material costs are to the account of BFC. BFC has the right to reject subsequent performance if the costs amount to more than 50 per cent of the delivery value.
 4. BFC's obligation to replacement shall be excluded in case of damages caused by defects in the design of the Product into which the Performance Subject has been worked in, or by instruction for this Product (§ 1, Section 3 of Product Liability Law). The same applies to defects that shall not or not essentially affect the suitability or the value of the Delivery Subject.
 5. BFC is liable for defects according to the legal regulations if damage is caused by it, as far as this damage are personal injury, as far this damage will be in the framework of the Product Liability Law, as far this damage is caused by intent or gross negligence. In case of breach of contractual obligations (so-called cardinal obligations) BFC, its legal representatives and servants shall be liable for contractual damages, also in case of slight negligence. Cardinal obligations are obligations the fulfilment of which, in fact, enables the proper execution of the Contract.
 6. Furthermore, all further claims of the Customer in connection with contractual breaches or offences are excluded. In case of damages not caused on the Delivery Subject itself compensation shall be excluded. BFC shall also not be liable for lost profit or other property damage of the Customer.

§ 6 Period of limitation

1. The period of limitation of claims and rights due to defects on the Performance Subject – for which reason whatsoever – is one year beginning from passing of risk. [This, however, shall not apply to cases of § 438, Section 1, Point 1 of German civil code (defective titles in case of immovables), § 438, Section 1, Point 2 of German civil code (buildings, items for buildings), § 479, Section 1 of German civil code (claim for recourse of the company) or § 634a, Section 1, Point 2 of German civil code (buildings of works the success of which consists in the execution of planning or survey performance). The periods stated in the above sentence 2 are subject to a period of limitation of three years].

2. The periods of limitation according to Section 1 are also valid to all damage claims to BFC connected with the defect – independent of the legal basis of the claim. As far as there are damage claims to BFC whatsoever that are not connected with a defect the period of limitation in Section 1, Sentence 1 shall apply to them.
3. The periods of limitation according to Section 1 and Section 2 apply in accordance with the following:
 - a) The periods of limitation shall not apply in case of intent.
 - b) The periods of limitation shall also not apply if BFC wilfully withholds the defect. In case BFC wilfully withheld a defect the legal periods of limitation that would apply without the existence of malice instead of those stated in Section 1 shall apply.
 - c) Furthermore, the periods of limitation for damage claims shall not apply in case of personal injury or infringement of health or freedom, in case of claims according to the Product Liability Law, in case of gross negligence of obligation or in case of breach of essential Contract obligations.
4. The period of limitation starts on delivery or acceptance respectively in case of all claims.
5. Unless expressly otherwise provided the legal provisions on the beginning of the period of limitation the operational blocking, the blocking and the new start of periods remain unaffected.
6. A change of burden of proof to the detriment of the Customer is not connected with the above provisions.

§ 7 Observance of secrecy

1. The Parties shall not give third parties access to mutual information or information of technical or business nature subject to secrecy during the Contract period and a period of five years from the conclusion of the contract. This shall not apply to information having been disclosed or made accessible to the other Party or the public without participation or by fault of the other Party, or to information having been disclosed or made accessible by an authorised third Party.
2. BFC expressly reserves the right to individually conclude further separate and additional agreements on research and development orders.

§ 8 Final provisions

1. Subcontracts, amendments and changes of the contracts concluded between BFC and the respective other Party shall be in writing to be valid. The same applies to waivers of the requirement for the written form.
2. The Law of the Federal Republic of Germany shall apply with the exclusion of the Purchase Law of the United Nations (CISG), the International Purchase Law (EKG and EAG) and the German International Private Law.
3. Schwerin shall be the sole place of jurisdiction if the Customer is the Merchant – in all disputes resulting from the Contract.

4. If a single or several provisions are or become fully or partly invalid the validity of the remaining provisions shall not be affected (conf. § 305 of German civil code). The same applies in case of a loophole. The contents, then, shall be ruled by the legal provisions if sticking to the Contract means an unreasonable hardship to one of the Parties.