

**TERMS AND CONDITIONS OF SALES / MACHINES/PLANTS**  
of  
**BHS CORRUGATED Maschinen- und Anlagenbau GmbH**  
(version: March 01, 2024)



**1. Scope of application**

1.1 These Terms and Conditions of Sales / Machines/Systems (in the following referred to as "Sales Conditions/BHS CORRUGATED") shall be applicable to all contracts made by and between BHS CORRUGATED Maschinen- und Anlagenbau GmbH, P.O. Box 107, D-92729 Weiherhammer, Germany (in the following referred to as "BHS CORRUGATED") and a Customer (hereinafter "Customer") for the sale of machines or plants.

If the Customer, when placing its purchase order, refers to the Sales Conditions/BHS CORRUGATED of its own, which have not individually been agreed upon with BHS CORRUGATED, even though BHS CORRUGATED had referred in its offer to the applicability of the Sales Conditions/BHS CORRUGATED, and if the Customer then accepts BHS CORRUGATED's performance of the Contract without objection, even though BHS CORRUGATED had again referred to the applicability of the Sales Conditions/BHS CORRUGATED in its order confirmation, the Customer shall be deemed to have accepted the inclusion of the Sales Conditions/BHS CORRUGATED by referral into the Contract when accepting delivery. This does not apply if the Customer objects in writing to the inclusion of the Sales Conditions/BHS CORRUGATED immediately after receipt of the first partial delivery of contractual objects.

1.2 With regard to future contracts between BHS CORRUGATED and the Customer for the delivery of machines and plants, the Sales Conditions/BHS CORRUGATED, once included at the time of the conclusion of contract, shall be applicable in the respective current version without further explicit reference thereto. BHS CORRUGATED is entitled to update the Sales Conditions/BHS CORRUGATED with future effect. For future contracts concluded for machines and plants, the version of the Sales Conditions/BHS CORRUGATED valid at [www.bhs-world.com](http://www.bhs-world.com) at the time of the conclusion of the respective contract shall apply.

1.3 The conditions in an order confirmation by BHS CORRUGATED or in a written offer by BHS CORRUGATED accepted by the Customer or in a supplementary written agreement between the Customer and BHS CORRUGATED take precedence over these Sales Conditions/BHS CORRUGATED. Moreover, deviations and additions must be made in writing for each individual Contract. Any waiver of this requirement needs to be in writing to be valid.

**2. Conclusion of Contract**

Offers of BHS CORRUGATED are non-binding and subject to confirmation. A contract shall only come into existence with the written order confirmation by BHS CORRUGATED or with the conclusion of a written contract (hereinafter jointly referred to as "Contract"). § 127 para. 2 of the German Civil Code (BGB) (telecommunication and correspondence) shall apply.

**3. Subject Matter of the Contract**

3.1 BHS CORRUGATED hereby undertakes to deliver the products listed in the order confirmation and any attachments or exhibits thereto or in a written Contract (in the following referred to as "Products"). If the Customer has ordered individual Products, the order confirmation will apply to the delivery of the individual items. The agreement to delivery of an aggregate group of articles requires an express written agreement or declaration in BHS CORRUGATED's offer in order to be legally considered as a one Contract. If a corrugating plant is the subject matter of a Contract, it shall be deemed as one Product.

3.2 The Customer shall inform BHS CORRUGATED about all legal and technical regulations applicable for machine manufacturers regarding occupational safety requirements, as well as all technical requirements for the production, delivery, installation, and operation of the machines or plants at its place of installation, no later than at the time of conclusion of Contract or when the Customer places its order. This applies to (federal) state and municipal regulations in

- laws, ordinances and statutes etc. also within the European Union.
- 3.3 BHS CORRUGATED shall have the right to modify the technical and other specifications to the Products and change its design and materials without notice, provided these modifications or changes are reasonable and do not affect the performance specifications stated in the Contract.
- 3.4 Insofar as software of BHS CORRUGATED is installed at the Customer's IT, BHS CORRUGATED grants the Customer a simple, non-transferable right to use the software in object code, limited to the respective system on which it was installed by BHS CORRUGATED, in the event of a sale of the Product in perpetuity and in the event of any other transfer of the contractual item for the duration of the respective contractual term. The Customer is not entitled to make changes and additions to the software. BHS CORRUGATED reserves the right to make changes and additions to the software during the term of the Contract insofar as these do not affect the existing system, in particular interfaces with the Customer. The Customer has no right to decompile or otherwise reverse-engineer the software, unless BHS CORRUGATED, despite several attempts within a reasonable time, is unable to eliminate defects that have occurred in the software and impede the operating procedure significantly, or to provide a workaround option reasonable for the Customer. The source code of any software of BHS CORRUGATED is not subject to any grant of a license.
- To the extent BHS CORRUGATED installs software from third parties on the contractual item, the above granting of rights shall be subject to the provision that BHS CORRUGATED itself has been granted a right of use by the third party for sub-licensing or as a licence relating to the Product. BHS CORRUGATED shall provide the Customer with information on individual licences for software installed in the Product.
- 3.5 BHS CORRUGATED shall be entitled to engage subcontractors or sub-suppliers to the extent that such subcontractors or sub-suppliers are contractually included by BHS CORRUGATED in writing in any mutual confidentiality obligation between Customer and BHS CORRUGATED.
- 3.6 Insofar as BHS CORRUGATED provides a VSE computer (VSE = virtual service engineer) or another computer for Remote Services/BHS CORRUGATED, which remains the property of BHS CORRUGATED at the operational site of the Customer's machines, the Customer shall have no right of use or access to the software installed on this/these VSE computer(s) or computer of BHS CORRUGATED.
- 3.7 BHS CORRUGATED reserves all property rights and rights of possession (Recht zum Besitz), copyrights and other industrial property rights as well as the protection of business and trade secrets to the programs and data and on VSE computer(s) or another computer that is the property of BHS CORRUGATED; to illustrations, drawings, calculations, computer programs; to data and databases to which the Customer has access, e.g. via the iCorr® platform of BHS CORRUGATED; to models, tools, offer documents and other items; as well as to technical or commercial know-how, collectively referred to as "BHS CORRUGATED Information." The BHS CORRUGATED Information may not be made available for viewing by third parties or handed over in copy or made accessible in other forms without the express written consent of BHS CORRUGATED; cf. Clause 12 of the Sales Conditions/BHS CORRUGATED below. BHS CORRUGATED information may solely be used by the Customer in connection with the examination of the BHS CORRUGATED offer as well as on the occasion of subsequent contractual performance and the contractual use of the delivery items. BHS CORRUGATED Information must be kept secret from third parties and must be protected by the Customer through in-house organizational and technical means such as passwords etc. or by third parties to the extent required to prevent unauthorized access. Customer will provide BHS CORRUGATED with information about the nature and extent of its protections for BHS CORRUGATED Information.
- 3.8 Computers, tools and other objects as well as data and data evaluations of or by BHS CORRUGATED, which are located at the site of the Customer or to which the Customer has access through or via BHS CORRUGATED, must be carefully stored or saved by the Customer, provided that the objects that are the property or in the possession of BHS CORRUGATED are to be protected by the Customer through technical and organizational access regulations in such a way that no unauthorized persons can access them. Any losses, damage or unauthorized access must be reported to BHS CORRUGATED immediately. The Customer shall be strictly liable in its area of responsibility in the event of damage or loss of the computer(s) transferred by way of lending or rental and for machines, tools or other objects – (2) for unauthorised copying, deletion or modification of software and/or data that are the property or in the possession of BHS CORRUGATED and (3) in the event of a breach of confidentiality of the BHS CORRUGATED Information named above in Clause 3.7.
- 3.9 The Customer agrees, upon the conclusion of the Purchase Agreement with BHS CORRUGATED, that BHS CORRUGATED

and any sub-contractors may, in the fulfilment of the contract with the Customer, collect and process data (i.e., personal and/or machine and production data) from the use and operation of the subject matter of the Contract by the Customer, transfer such data to their own computers or those of the sub-contractors and also use it for their own operational purposes for an unlimited period of time (hereinafter, "Data Use"). This shall be limited in scope by Clause 4.3 (Personal Data Protection) and Clause 12 "Confidentiality" (below). The Data Use shall not give rise to any Customer's claim to remuneration for the Data Use.

- 3.10 The Customer warrants that the machines or plants for which it has also placed an order for Remote and iCorr Services/BHS CORRUGATED will be used in accordance with the instruction manuals and that neither the Customer nor any third party will make any changes or additions to or interfere with or in the machines/plants without BHS CORRUGATED being informed in advance.
- 3.11 The Customer shall immediately inform BHS CORRUGATED of any malfunctions of machines or plants for the purpose of rectifying defects or providing contractual service. Along with the disruption message, the Customer should give precise details of where the disruption has occurred and provide BHS CORRUGATED with the support required on the part of the Customer for rapid error analysis, including remote diagnostics, free of charge. The Customer shall keep the required technical documents as well as repair and maintenance records available at the place of installation of the machine/plant or electronically or make them available in scanned form by e-mail or online.
- 3.12 The Customer shall provide employees of BHS CORRUGATED or authorized third parties with unrestricted access to the machine/plant for the fulfilment of contractual obligations to the Customer and, if necessary, provide BHS CORRUGATED with the desired assistance in the performance of its contractual obligations, as further identified in Clause 7 below. To the extent this support includes the provision of personnel, this must be sufficiently qualified. Third-party personnel shall not be in competition with BHS CORRUGATED
- 3.13 If acceptance has been agreed, BHS CORRUGATED shall draw up an acceptance report, upon request and in the presence of the Customer, in which the completed work is recorded in detail. The Customer shall immediately sign the acceptance report if no defects or only insignificant defects are found, which are not capable of impairing the operability of the machine or system. Any detected defects shall be noted in the acceptance report and rectified by BHS

CORRUGATED immediately or without undue delay, depending on the severity of the defect. To the extent it has not been already done, the Customer shall sign the acceptance report after the defect has been remedied.

#### **4. Newsletter/Data protection**

- 4.1 BHS CORRUGATED informs its Customers upon being contacted by the Customer about products and services of BHS CORRUGATED and corporate activities by newsletter.

If the Customer does not wish to receive advertising or product and service information from BHS CORRUGATED, the client can unsubscribe via the address [unsubscribe-newsletter@bhs-world.com](mailto:unsubscribe-newsletter@bhs-world.com).

- 4.2 The collection, storage, transfer and use of data of the Customer on the occasion, for example, of the Remote Services/BHS CORRUGATED of BHS CORRUGATED takes place via technology like sensor technology on the relevant machine/plant as well as via input by the operating personnel during operation of the machine/plant. Here, BHS CORRUGATED collects production and machine data.

- 4.3 As far as any data is collected which qualify as personal data for either the Customer and/or BHS CORRUGATED, and/or its sub-contractors, the parties shall enter into a separate agreement to ensure data protection.

#### **5. Terms of payment**

- 5.1 The lump sum or unit prices quoted in the Contract are fixed prices unless otherwise agreed.

They comprise the provision of the machines ex works excluding value added tax or delivery costs such as packaging, freight, insurance, customs or other state duties due to a delivery to Customer which have from a financial point of view a similar effect like customs, assembly and installation etc. Any VAT incurred shall be invoiced in addition at the respective statutory rate.

- 5.2 Invoices of BHS CORRUGATED must be transferred by the Customer to one of the specified bank accounts of BHS CORRUGATED within 30 days of the date of invoice without deduction of non-agreed discounts. Payment dates listed in the Contract are binding and take precedence over the above payment period.

- 5.3 Unless otherwise agreed upon, payment to BHS CORRUGATED shall be made according to the following payment schedule:

- Thirty percent (30 %) of the purchase price as a down-payment upon conclusion of the Contract;
- Fifteen percent (15 %) within two months after conclusion of the Contract;

- Fifteen percent (15 %) four months before the scheduled date of delivery;
  - Thirty percent (30 %) after BHS CORRUGATED's sends notice that the Products are ready for delivery;
  - Ten percent (10 %) upon start-up.
- 5.4 The prices of BHS CORRUGATED are based on the respective cost factors for production, personnel, energy, purchasing and transport in the German mechanical engineering industry at the time of conclusion of the Contract. If, for reasons for which BHS CORRUGATED is not responsible, these costs increase by more than 5% until delivery, BHS CORRUGATED reserves the right to increase the price to the extent of the increase in costs since conclusion of the Contract less 5% of its own risk, insofar as there are more than 6 months between the placing of the order and the first partial delivery or the delivery.
- 5.5 All claims of BHS CORRUGATED, which are not yet due, shall become due immediately irrespective of the term of any received and credited bills of exchange or granted respites, if any, in the event that the Customer does not comply with any applicable and agreed terms of payment or that any circumstances become known to BHS CORRUGATED which reduce the Customer's credit standing. In this case BHS CORRUGATED shall have the right to effect outstanding deliveries only against prepayment or against prior provision of collateral security. Any additional legal claims of BHS CORRUGATED shall remain unaffected.
- 5.6 If the Customer defaults on payments within its business relationship with BHS CORRUGATED or if acceptance or taking delivery is delayed, BHS CORRUGATED is entitled to temporarily store the delivery items at the cost and risk of the Customer. In such cases, the total amount of the Contract price, unlike other contractually agreed terms of payment, shall be due for payment upon unsuccessful expiry of a reasonable grace period.
- 6. Deadlines / delivery terms**
- 6.1 Deliveries within Germany are made "ex works", BHS CORRUGATED, then to loading edge or ex sub-supplier. The risk of accidental destruction shall pass over to the Customer upon the start of loading the Products provided by BHS CORRUGATED for collection. International deliveries shall also be "ex works" (Incoterms 2020) from Germany. Any packaging material shall not be part of the Product and shall, on demand of BHS CORRUGATED, be returned to BHS CORRUGATED by the Customer free of charge or otherwise be disposed of at the expense of the Customer.
- 6.2 BHS CORRUGATED shall be entitled to make partial shipments if the nature of the Products allows to do so.
- 6.3 Delivery dates are to be considered as approximates unless they agreed upon in writing as fixed dates.
- Unless separately stipulated in the contract, the delivery period shall commence on the date of the order confirmation by BHS CORRUGATED or the signing of the contract by both parties and shall not end prior to the necessary clarification by the Customer of all details of execution required for a delivery and of the other contractual obligations to be fulfilled by the Customer on the occasion of the delivery, in each case plus a reasonable period of time for implementation for BHS CORRUGATED in the individual case.
- The contractual delivery term shall be deemed to have been met if BHS CORRUGATED has notified the Customer in time of its readiness to deliver, but the Customer does not or not sufficiently or only delayed contribute to assist to fulfil the Contract.
- 6.4 In the event of force majeure such as e.g.
- an officially determined pandemic having direct effect on the fulfilment of contractual obligations of BHS CORRUGATED or
  - operational disruptions for which BHS CORRUGATED is not responsible, industrial disputes not caused by lockout by BHS CORRUGATED, civil unrest, subcontractor default for which BHS CORRUGATED is not responsible.
  - any other events that BHS CORRUGATED cannot prevent,
- as well as for actual situations that have a similar effect, e.g.
- substantial legal or administrative measures, e.g. punitive tariffs which increase the Contract price for the Product by more than 10 % or other substantial non-tariff barriers as for example approval requirements for Products which increase 10 % of the own costs of BHS CORRUGATED for the distribution of a Product,
- which were not yet known at the time of the conclusion of the contract or the order confirmation, BHS CORRUGATED is entitled to either postpone the delivery and/or the assembly and/or commissioning by the duration of the hindrance up to a maximum of 1 year as well as a restart time required in the individual case at BHS CORRUGATED, or
- to withdraw from the Contract if a performance of the Contract cannot be reasonably expected. In this case, services already rendered by the other party shall be reversed as far as possible.

Instead of the declaration of a Contract withdrawal by BHS CORRUGATED, BHS CORRUGATED may demand a Contract amendment from the Customer, according to which the contractual scope of services already provided by BHS CORRUGATED remains with the Customer and the Customer pays the contractually agreed price for this less saved expenses at BHS CORRUGATED, unless this Contract amendment is not reasonable for the Customer. The Contract amendment is made by unilateral written declaration of BHS CORRUGATED to the Customer. The objection of the lack of reasonableness is made by written declaration of the Customer to BHS CORRUGATED. Until a decision is made on the justification of the objection, the conditions of the existing Contract shall continue to apply reduced accordingly by the scope of services not fulfilled by BHS CORRUGATED.

In the event of a withdrawal from the Contract by BHS CORRUGATED, the Customer is entitled, within a period of three weeks from the declaration of the withdrawal from the Contract by BHS CORRUGATED, to demand, instead of the annulment of the Contract, that the contractual scope of services already provided remains with it and that it pays the contractually agreed price to BHS CORRUGATED less saved expenses at BHS CORRUGATED. In this case, the Parties hereby agree that the contractual terms and conditions shall apply reduced by the scope of performance not fulfilled by BHS despite the withdrawal.

A claim for damages against BHS CORRUGATED arising from a delay in delivery, installation and/or commissioning due to the hindrance or due to a withdrawal from the Contract or a declared amendment to the Contract is excluded.

- 6.5 If BHS CORRUGATED carries out the assembly, the Assembly Terms and Conditions/BHS, which can be accessed and printed out at [www.bhs-world.com](http://www.bhs-world.com), under "General Terms and Conditions" and "Contact", shall also apply.
- 6.6 If a technical acceptance is desired, their conditions must be determined at the latest when the Contract is concluded. The mutual costs of such acceptance shall be borne by the Customer. The regulations for acceptance in § 640 of the German Civil Code (BGB) (in force since January 1, 2018) apply with the provision that a right to refuse acceptance within the meaning of § 640 para. 1 BGB requires the existence of a substantial defect, and that the provision of information on a substantial defect for a refusal of acceptance is required for a non-occurrence of acceptance in § 640 para. 2 BGB and that the substantial defect actually exists.

The agreement upon an acceptance should not have the legal consequence that the Agreement is thus to be qualified as a contract for work.

## **7. Customer's Obligations on Site with Respect to Installation Services**

- 7.1 BHS CORRUGATED agrees to perform the installation service set forth in the Contract. Where not expressly mentioned in the Contract, the Customer shall be obliged to provide such facilities or perform such service as become necessary in connection with the installation of the Products. In particular, it shall install main power lines or dedicated installation circuits for computer connections, perform masonry and caulking work, lay suitable industrial floors as well as provide stationary safety devices, make structural alterations on existing buildings or facilities as well as take suitable fire protection and/or noise protection measures.
- 7.2 The Customer shall provide free of charge the necessary lifting and conveying devices and personnel for the unloading, transportation on site as well as the assembly and installation of the Products. Foundations or buildings must be completed at the time of delivery to the extent that assembly and installation can begin immediately. If, through no fault of BHS CORRUGATED, installation or start-up is delayed, the Customer shall bear the ensuing extra costs including any costs for personnel provided by BHS CORRUGATED.
- 7.3 If the Customer demands BHS CORRUGATED to perform such installation services outside normal working hours, the extra pay for overtime, Sunday and holiday premiums will be invoiced to the Customer based on the current prices of BHS CORRUGATED.

## **8. Special Terms and Conditions of Sales for Used Products**

- 8.1 Should the Customer purchase a plant or machine from BHS CORRUGATED which, as provided by the Contract, incorporates new and used components or even solely used components, BHS CORRUGATED will grant warranty according to Clause 9 of the Sales Conditions/BHS CORRUGATED for the new components. No warranty will be given for the used components of the plant beyond any provisions in Clause 8.2 of the Sales Conditions/BHS CORRUGATED.
- 8.2 If BHS CORRUGATED undertakes in whole or in part to supply a used device or used parts of a system, there shall only be a claim to warranty also for the used components insofar as BHS CORRUGATED has expressly undertaken to inspect the used devices or parts for their functionality and to repair them if necessary or insofar as BHS CORRUGATED

has expressly undertaken by contract to carry out a general overhaul.

If only an examination for operability and any necessary repairs have been agreed upon but not a general overhaul, BHS CORRUGATED will grant a six month warranty, starting at the time of delivery of the used product's or component's operability at the time of delivery. This warranty shall not apply to any defect which becomes apparent after delivery and is to be attributed to the fact that these products or components are not new (e.g. wear and tear, aging).

BHS CORRUGATED will grant a six months warranty from the date of delivery on all used products and components which have been subjected to a general overhaul. Clauses 9.2 to 9.11 shall apply accordingly, in so far as warranty is granted by BHS CORRUGATED. Any claims based on a violation of any collateral contractual duties according to § 241 para. 2 German Civil Code (BGB) arising in connection with a defect shall become statute-barred within the same six-month period from the time of delivery which applies to all other contractual warranty claims.

8.3 If the parties agree that a used product or component will be repaired or subjected to a general overhaul before delivery, a major repair or general overhaul may make it necessary for BHS CORRUGATED to furnish a new operating manual for the overhauled or repaired system. This will cause considerable costs not covered by the calculated price. In such cases, the client undertakes vis-à-vis BHS CORRUGATED to prepare its own operating instructions which comply with the statutory requirements for the operation of the system or machine at the installation site. BHS CORRUGATED will remind the Customer of this obligation again in writing at the time of delivery. The Customer shall hold BHS CORRUGATED harmless against any and all claims arising out of or in any way associated with the lack of such operating manual upon first request by BHS CORRUGATED if such claims are made by any third party and indemnify BHS CORRUGATED in particular from any and all expense including litigation costs and attorney's fees.

8.4 Unless otherwise provided in this Clause, the other provisions of these Sales Conditions/BHS CORRUGATED.

## 9. Claims for Defects (Warranty)

9.1 Both contracting parties hereby agree on the occasion of the conclusion of the Contract that the respective contractual specification for machines and/or plants (detailed individual technical description of the subject matter of the Contract as well as the conditions for an assembly including the customer's duties to cooperate, hereinafter "Specification") and/or

the product designation of wear and spare parts document the subjective and objective requirements according to § 434 of the German Civil Code (BGB) regarding the subject matter of the Contract and that a deviation from the Specification or the part under the relevant part designation may constitute a defect. A defect exists if the subject matter of the Contract does not correspond to the usual and contractual condition in terms of quantity, quality and other characteristics of the item.

9.2 The warranty period shall be twelve (12) months from the date of transfer of risk or, in the case of the Customer delaying acceptance, from the date of notification of the Products' readiness for delivery. Any claims based on a violation of any ancillary contractual duties according to § 241 para. 2 German Civil Code (BGB) arising in connection with a defect shall become statute-barred within the same twelve-month period from the time of transfer of risk which applies to all other contractual warranty claims. If a claim for defect is based on intent, bad faith, or gross negligence on the part of BHS CORRUGATED or its bodies or vicarious agents or in the case of loss of life, limb or health, the statutory limitation period of 2 (two) years applies to claims under Clause 9.2 sentences 1 and 2. The limitation periods for tort claims remain unaffected by Clause 9.2.

9.3 Any agreement to perform a formal technical acceptance shall not have any effect on the start of the warranty period as defined in Clause 9.2. BHS CORRUGATED and the Customer will inspect the Product or Products for conformity with the Contract within a week after BHS CORRUGATED's notice of the Products' readiness for acceptance and then sign the required acceptance protocol. In the case of identified defects or deviations, which limit the operability of the goods or of the delivery items insignificantly in comparison with their contractually intended or usual use as agreed in individual cases, the Customer shall record the same in an error log for acceptance and sign the acceptance report. If the Customer does not participate in the acceptance procedure or does not cooperate in the way stipulated by the Contract, the Product or Products shall be deemed accepted as of four months after notice of its/their readiness for acceptance, provided BHS CORRUGATED has pointed out this consequence in its notice. If the Customer is able to refuse acceptance, BHS CORRUGATED is entitled to indicate a new readiness for acceptance after the defect has been eliminated (restoration of contractual conformity). If part shipments have been agreed upon, the Customer shall also accept such part shipments.

9.4 If no acceptance procedures have been agreed upon, the Customer shall inspect the Product immediately upon receipt for any defects or

variations from the contractual specifications (non-conformity with the Contract) and, if applicable, notify BHS CORRUGATED accordingly in writing. In the case of hidden defects or deviations, the same applies as of the initial discovery by the Customer.

9.5 BHS CORRUGATED warrants that the Products are in conformity with the specifications stated in the Contract and, if provided for in the Contract, that they are fit for the purposes according to the Contract, or otherwise that they are suitable for the use which is customary for objects of the kind and which the Customer can reasonably expect from such objects (hereinafter collectively "Warranty").

BHS CORRUGATED will only warrant and be liable for such specifications concerning the Products which have been made part of the Contract or which are part of the sales brochures of BHS CORRUGATED. This shall not apply, however, to any promotional statements made in advertisements, at industrial fairs or in other advertising media, unless the Customer has expressly pointed out to BHS CORRUGATED that it desires such a general statement to be binding and part of the Contract before the Contract was made and BHS CORRUGATED has not refused to comply with its wish.

9.6 BHS CORRUGATED shall grant the same Warranty on any parts exchanged during the warranty period as for any services to be performed in accordance with the Contract. Such Warranty shall end, however, no later than 18 months (for overhauled parts: 12 months) after the original transfer of risk of the part. Clause 9.1 sentence 3 also applies here.

9.7 Within the warranty period, BHS CORRUGATED shall remedy, free of charge, any defects (lack of conformity) which can be proven to have existed at the time of risk transfer either by replacement or repair at the discretion of BHS CORRUGATED. If a replacement or repair with respect to the same defect is repeatedly unsuccessful, or if BHS CORRUGATED refuses, without cause and definitely, to replace or repair the Product or part of it, or if a delay in performance of these obligations is not acceptable to the Customer, the Customer shall be entitled to reduce the price or to withdraw from the Contract after having set a reasonable time limit and having advised BHS CORRUGATED of the intended legal consequences.

9.8 For the execution of repairs under Warranty, the Customer shall provide free of charge the necessary personnel and in particular the necessary lifting and conveying devices at the time required. Any costs for packaging and transport of defective parts that have to be sent back shall be refunded by BHS

CORRUGATED to the Customer against proof of payment and invoice. If a part is replaced, the ownership to the part shall be automatically transferred from the Customer to BHS CORRUGATED with the removal of the part from the machine or plant and, by the same token, the ownership to the replacement part from BHS CORRUGATED to the Customer with the installation of the replacement part, as governed in Clause 11. On the demand by BHS CORRUGATED, the Customer shall return removed parts to BHS CORRUGATED.

9.9 A claim of the Customer for reimbursement of the necessary expenses for the removal and the installation or the mounting of the repaired or delivered faultless items requires that BHS CORRUGATED did not carry out the aforementioned works despite written request of the Customer, or did not carry them out properly, and the contractual object was installed or mounted onto another item by the Customer for its intended purpose, or vice versa, another item was mounted onto the contractual object, of which BHS CORRUGATED was positively aware upon conclusion of the Contract. This applies in particular to the connection of other machines or devices to the contractual object and to connection with third-party software, third-party sensors and external data that may influence the operation of the Product.

9.10 If the Customer fails to cooperate in order to carry out the replacement delivery or elimination of defects, or if it refuses to accept supplementary performance, the further Warranty shall be void.

9.11 In the event of a defect or an error, the liability for compensation for damages shall not apply if the slightest or simple negligence has resulted in damage. This basic limitation of liability does not apply in the event of a breach of a guarantee or loss of life and injury to limb and health, as well as in the case of legal product liability.

9.12 The Warranty shall not apply to defects resulting from normal wear and tear, improper or negligent use, excessive load, unsuitable expendables, or materials or use by the Customer not in accordance with the operating conditions specified in the Contract. This shall also apply to defects caused by an unsuitable site of installation or by a condition unforeseeable for BHS CORRUGATED at the time of concluding the Contract. This does not affect the Customer's claim to Warranty in the case of proof of a defect by the Customer, which existed at the time of transfer of risk despite the restrictions in Clause 9.12 sentences 1 and 2.

9.13 Data or characteristics of the purchased item shall not be considered as guaranteed properties, unless such a guarantee has been

expressly agreed with BHS CORRUGATED in writing or has been declared in writing by BHS CORRUGATED.

9.14 BHS CORRUGATED may defer the correction of defects if the Customer is in delay with its due payments or obligations to cooperate.

9.15 If BHS CORRUGATED sells the contractual object to the Customer within a supply chain and the Customer itself resells the contractual object, the Customer undertakes to include BHS CORRUGATED in its elimination of defects in the event of a claim due to a defect in the contractual object. A right of the Customer against BHS CORRUGATED for reduction, withdrawal and/or a claim for damages arising from a defect presupposes that BHS CORRUGATED had the possibility to eliminate the defect or to perform a replacement delivery. This also applies to the entitlement to reimbursement of expenditures on the occasion of an elimination of defects. Clause 9.9 applies accordingly.

9.16 If any defect should be fraudulently concealed by BHS CORRUGATED or in case an express guarantee for a specific characteristic was agreed on with the Customer the limitations of the statutory warranty in Clauses 9.2, 9.6, 9.7, and 9.11 above shall not apply. Instead the applicable statutory regulations shall apply.

## 10. Liability

10.1 BHS CORRUGATED, its bodies and vicarious agents shall be liable in the event of a culpable breach of contractual obligations, including pre-contractual and ancillary contractual obligations, in the event of tort and for any other legal reason not separately regulated in these Terms and Sales Conditions/BHS CORRUGATED, limited to cases of intent, fraudulent intent and gross negligence.

10.2 In the event of impossibility, inability or in the case of culpable violation of another essential contractual obligation (*vertragswesentliche Pflichten*), BHS CORRUGATED shall be liable solely to the exclusion of cases of the slightest negligence. Essential contractual obligations are those which entail mutual obligations and the infringement of which jeopardizes the achievement of the purpose of the Contract and the fulfilment of which makes the proper execution of the Contract possible and on the fulfilment of which the Customer can therefore rely. In cases of gross or simple negligence BHS CORRUGATED's liability under this Clause 10.2 shall be limited to such damages, which could have been foreseen by BHS CORRUGATED at the conclusion of Contract, by applying the due care of a prudent businessman, as potential result of a culpable violation of essential contractual obligations.

10.3 The provisions on liability for damages in the event of defects in Clause 9.11 of these

Sales Conditions/BHS CORRUGATED shall take precedence over Clause 10, Paragraphs 1 and 2 above.

10.4 The limitations of liability do not apply in the case of liability under the Product Liability Act or in the case of liability for loss of life, limb and health.

## 11. Reservation of Title and Ownership

11.1 Title to and ownership of the Product or Products shall remain with BHS CORRUGATED until the Customer has satisfied all claims of BHS CORRUGATED resulting from and in connection with the Contract in question.

11.2 BHS CORRUGATED shall be entitled to assert a claim for return if the Customer is in default with the payment of all or part of the purchase price and/or if, after conclusion of the Contract, it becomes apparent that BHS CORRUGATED's claims for return service are jeopardised by a lack of ability to pay on the part of the Customer, insofar as BHS CORRUGATED has given written notice of the assertion of the claim for return and settlement of the claim due thereupon has not taken place within a reasonable period.

11.3 The Customer shall immediately surrender the Products to BHS CORRUGATED. Upon conclusion of the Contract, the Customer irrevocably agrees to permit BHS CORRUGATED to enter its premises and sites for the purpose of taking possession of the Products.

11.4 For as long as the title to the Products has not passed on to the Customer, the Customer shall be obliged to adequately insure the Products against fire and other applicable risks and have BHS CORRUGATED named as the sole beneficiary in the policy. The insurance policy shall be forwarded to BHS CORRUGATED. In the case of damage, the use of the insurance payment shall be at the discretion of BHS CORRUGATED.

11.5 If the retention of title or the assignment is not effective in rem under the national law in whose scope of application the goods are located, the possible security of the contractual claims of BHS CORRUGATED with the Customer corresponding to the retention of title and the assignment in this legal system shall be deemed agreed. The Customer undertakes to cooperate with BHS CORRUGATED in the furnishing of collateral security. Any related costs shall be borne by the Customer.

11.6 Pledging or transfer of property by way of security in connection with Products whose title is reserved shall not be permitted. Any levy of execution against the Customer into the ownership of BHS CORRUGATED shall immediately be reported to BHS CORRUGATED identifying the creditor.



## 12. Confidentiality

- 12.1 BHS CORRUGATED Information, cf. Clauses 3.6 and 3.7 of these Sales Conditions/BHS CORRUGATED, as well as all information otherwise provided by BHS CORRUGATED, may not be made available to third parties unless they are clearly intended for other persons aside from the Customer, as far as this is not required as part of the intended use of the delivery items by the Customer. For the purposes of this Clause, "third parties" are natural persons or legal entities that are not the Customer's organs or employees, as well as such contractors of the Customer who fail to commit themselves in writing to comply with the confidentiality provisions in Clauses 3.6 and 3.7 as well as Clause 12 of these Sales Conditions/BHS CORRUGATED.
- 12.2 In the event of a breach of the confidentiality obligations by a person assignable to the Customer (organ, employee and/or contractor), the Customer undertakes to pay a penalty in the amount of EUR 10,000 per infringement subject to further claims for damages. Upon request, the Customer shall provide, without undue delay, complete information about the manner in which the BHS CORRUGATED Information is used, and in particular about any contractor of the Customer who violates these confidentiality obligations.
- 12.3 BHS CORRUGATED undertakes with respect to the Customer not to transfer to third parties any data (i.e., machine and production data) of which it gains knowledge during the performance of the contractually agreed services for the Customer. The same applies to the evaluations of data for the Customer. The confidentiality obligation shall not apply to the extent that the Data Use within the meaning of Clause 3.9 above by BHS CORRUGATED's sub-contractors is necessary for the contractual services of BHS CORRUGATED vis-à-vis the Customer. The Customer consents to the transfer of data to and Data Use by the relevant sub-contractor. The regulation on the protection of personal data within the meaning of the reference under Clause 4.3 above shall furtherly apply.

## 13. (Re-) Export; Embargo

- 13.1 Both parties shall ensure that, on the occasion of the conclusion and performance of a Contract covered by these Sales Conditions/BHS CORRUGATED, they comply with the laws and regulations concerning (re-)export relating to the delivery items or parts thereof in Germany, in the EU and in the country of the registered office or the place of installation for the Product and, if applicable, an involved third country. "Third Country" shall

mean for the purposes of this Clause a country of origin of a Product or parts thereof which may impose restrictions on either party concerning exports as e.g. the US Commerce Control List.

- 13.2 The same shall apply to state embargo restrictions which effects the Product or parts thereof.
- 13.3 If BHS CORRUGATED fails to deliver the Product or parts thereof due to aforementioned reasons, this shall be treated as a force majeure event as defined in Clause 6.4 of these Sales Conditions/BHS CORRUGATED.
- 13.4 Should the Customer breach its obligations under the aforementioned Clauses 13.1 and 13.2, the Customer shall indemnify BHS CORRUGATED from all liabilities towards any third party and shall compensate BHS CORRUGATED all costs of the necessary legal defence.
- ## 14. Miscellaneous
- 14.1 This Contract or any right or claim based on it may not be transferred or assigned to any third parties without prior written consent of the other party.
- 14.2 The Customer is only entitled to declare a setoff or to assert a right of retention vis-à-vis BHS CORRUGATED, including a commercial right of retention, if the claim in question is undisputed or has been legally established by a court or in the event of a material breach of Contract by BHS CORRUGATED.
- 14.3 Should any provision of these Sales Conditions/BHS CORRUGATED be or become ineffective, the other provisions herein shall remain in full force and effect. The parties to this Contract shall replace the invalid provision by a legally effective provision which is in content and purpose the most similar to the invalid one. This shall also apply in case of a missing regulation in the Contract.

- 14.4 The law of the Federal Republic of Germany applies, to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG), to the exclusion of those provisions of German private international law that would lead to the application of another legal system. In case of any discrepancy or contradiction between the German language version and a non-German language version, the German language version shall prevail.

- 14.5 Place of fulfilment for all payment claims of BHS CORRUGATED resulting from this Contract shall be BHS CORRUGATED's registered place of business in Germany, see Clause 1.1.

The place of jurisdiction for any legal disputes arising from or in connection with this Contract for legal proceedings against Customers shall

be, at the discretion of BHS CORRUGATED, the registered office of BHS CORRUGATED (see Clause 1.1) or another legal place of jurisdiction, and, in the event of legal proceedings by the Customer against BHS CORRUGATED, it shall be the registered office of BHS CORRUGATED, see Clause 1.1. This jurisdiction agreement applies only to merchants within the meaning of commercial law.