

SALES CONDITIONS/BHS – Machines, Plants -

of

BHS Corrugated Machinery (Shanghai)

(As revised: 16.09.2014)

1. Scope of Application

- 1.1 These Terms and Conditions of Sales/BHS - Machines, Plants (hereinafter referred to as "Sales Conditions") shall be applicable to all contracts made by and between BHS Corrugated Machinery (Shanghai) Co., Ltd. (hereinafter referred to as "BHS") and any Customer for the sale of machines or plants. If the Customer, when placing its purchase order, refers to terms and conditions of its own, which have not individually been agreed upon with BHS, the terms and conditions of the Customer (including those that appear in any acceptance, shipping documentation, invoice or acknowledgement of the Customer) shall not apply. These Terms and Conditions along with any other specifications or requirements transmitted to the Customer by BHS in connection therewith shall be the complete and exclusive statement of the contract between the Customer and BHS. The Customer shall be deemed to have agreed to these Terms and Conditions when the Customer accepts any items or service delivered or rendered by BHS. The Customer waives any right to contest the validity of these Terms and Conditions.
- 1.2 These Sales Conditions, once included, shall also apply to subsequent contracts by and between BHS and the Customer even if they are not expressly referred to again.
- 1.3 Any amendments or additions hereto shall, however, be agreed upon in writing for each individual contract. Any waiver of this requirement needs to be in writing to be valid.

2. Written Agreement

Offers of BHS are subject to confirmation. A contract shall only be deemed to have been concluded upon a written order confirmation issued by BHS or the signing of a written contract by both parties (both together referred to hereinafter as "Contract"). Any transfer by telecommunication or by exchange of letters shall be deemed to

be in writing or as a written contract.

3. Subject Matter of Agreement

- 3.1 BHS hereby undertakes to deliver the products listed in the order confirmation and any attachments or exhibits thereto or in a written contract (hereinafter referred to as "Products"). If the Customer has ordered several individual Products, the order confirmation will apply to the delivery of the individual articles. If the Customer wishes such Products to be delivered as an entity, this shall be agreed upon in writing or expressly mentioned in the order confirmation for such order to be deemed legally an entire Contract. If a corrugating plant is the subject matter of a Contract, it shall be deemed as a uniformed product.
- 3.2 BHS shall have the right to modify the technical and other specifications to the Products and change their design and materials without notice provided that these modifications or changes are reasonable and do not affect the performance specifications stated in the Contract.
- 3.3 BHS shall have the right to subcontract all or part of its Contract with the Customer.
- 3.4 BHS reserves all rights of title to goods as well as all copyrights or other intellectual property rights and industrial rights to all illustrations, drawings, calculations, computer programs, data files, models, tools, offer documents and other objects as well as to technical or commercial know-how, collectively referred to as BHS Information. This BHS Information shall not be disclosed to any third parties without the prior written approval by BHS (see Clause 11 of the Sales Conditions). BHS Information shall only be used in connection with the examination of a BHS offer and the subsequent performance of the Contract, or for making use of the delivered machines or plants as stipulated by BHS.

3.5 Any machines, tools and other objects that are the property of BHS but in the possession of the Customer shall be stored carefully by the Customer. BHS shall be informed immediately of any loss or damage thereto. The Customer – whether at fault or not - shall be liable for any damage or loss of machines, tools or other objects provided to it by BHS and incurred in its area of responsibility. The Customer shall also be liable in case of any breach of confidentiality concerning the BHS Information described in Clause 3.4 which occurs in its area of responsibility.

4. Terms of Payment

4.1 Prices quoted in the Contract are fixed prices, unless otherwise agreed by both parties. They comprise the provision of the machines ex works, excluding value added tax and delivery costs such as packaging, freight, insurance, duties, assembly and installation etc. Any applicable value added tax will be invoiced in addition.

4.2 Unless otherwise agreed upon in the Contract, payment shall be due immediately upon receipt of the invoice. If the Contract stipulates any payment dates, such dates shall be deemed the binding date of receipt of payment by BHS. All invoices shall be paid in full without any deduction.

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

- Thirty percent (30%) of the purchase price as the 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's notice that the Products are ready for delivery;
- ten percent (10%) upon start-up.

4.4 BHS's prices are based on the cost factors applying to producing and purchasing in the Chinese engineering industry at the time of the conclusion of the Contract. Should these costs change for reasons beyond the

control of BHS, BHS reserves the right to increase its prices by the amount of the increase in costs since the conclusion of the Contract, provided the order date and the date of the first part shipment or the date of delivery are more than six months apart.

4.5 All claims of BHS, 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 which reduce the Customer's credit standing. In this case BHS shall also have the right to effect outstanding deliveries only against prepayment or against prior provision of collateral security. Any additional legal claims of BHS shall remain unaffected.

5. Terms of Delivery

5.1 The terms of delivery within China shall be "ex works", boundary of BHS's or its subcontractor's site. The risk of accidental destruction shall pass over to the Customer upon the start of loading the Products provided by BHS for collection. International deliveries shall also be "ex works" (Incoterms 2010) from China. Any packaging material shall not be part of the Product and shall, on demand of BHS, be returned to BHS by the Customer free of charge or otherwise be disposed of at the expense of the Customer.

5.2 BHS shall be entitled to make partial shipments if the nature of the Products allows doing so.

5.3 Quoted delivery dates are to be considered as approximates unless they are agreed upon in writing as fixed dates.

Unless otherwise agreed upon in the Contract, the delivery term shall start with the date of the conclusion of the Contract between the two parties and shall not end before all necessary details of the delivery have been clarified by the Customer and all other contractual obligations of the Customer in connection with the delivery have been fulfilled plus, on a case-by-case basis, a reasonable period of time for BHS to arrange delivery.

The contractual delivery term shall be deemed to have been met if BHS has notified the Customer in time of its readiness to

deliver, although the Customer fails to fulfill or sufficiently fulfill, or delays to assist fulfilling the Contract.

- 5.4 In the event of force majeure, such as but without limitation plant interruption not caused by BHS, riots, subcontractor's delay beyond the control of BHS as well as in the case of legal or administrative measures not known at the time of the conclusion of the Contract or any other events that BHS cannot prevent, BHS shall be entitled either to postpone delivery for the duration of the impediment plus, on a case-by-case basis, a reasonable restarting time or to rescind the Contract if a performance of the Contract cannot be reasonably expected.
- 5.5 Should the Customer be in delay with payment or with the receipt or acceptance of the Products, BHS shall have the right to put the Products into intermediate storage at the expense and risk of the Customer. If the delay has not been remedied after the expiration of a reasonable grace period, the total amount of the purchase price shall become due.
- 5.6 If BHS performs the installation of the Product(s), the BHS/Installation Conditions shall also apply. These BHS/Installation Conditions are enclosed and also are available from BHS by phone, facsimile transmission or e-mail at any time; visit www.bhs-corrugated.de and see "contract".
- 5.7 Should a formal technical acceptance be desired, its conditions shall be agreed upon not later than at the time of concluding the Contract. The costs of such acceptance incurred by both parties shall be borne by the Customer. The agreement upon an acceptance to be performed does not qualify this Contract as a contract for work.
- 6. Customer's Obligations on Site with Respect to Installation Services**
- 6.1 BHS agrees to perform the installation work set forth in the Contract. Where not expressly mentioned in the Contract, the Customer shall be obliged to provide such facilities or perform such work 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.

- 6.2 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, installation or start-up is delayed, the Customer shall bear the ensuing costs including any costs for personnel provided by BHS.
- 6.3 If the Customer demands BHS 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.

7. Special Terms of Sale for Used Products

- 7.1 Should the Customer purchase a plant or machine from BHS which, as provided by the Contract, incorporates new and used components or even solely used components, BHS will grant warranty according to Clause 8 of these Sales Conditions for the new components. No warranty will be given for the used components of the plant beyond any provisions in Clause 7.2 of these Sales Conditions.
- 7.2 If BHS undertakes to deliver a used product or used components of a plant, warranty will only be extended to such used products or components, if BHS has expressly agreed to examine such used products or components for their operability and repair them if necessary or if BHS has expressly agreed to perform a general overhaul.

If only an examination for operability and any necessary repairs have been agreed upon but not a general overhaul, BHS 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 will grant a six-month warranty from the date of delivery on all used products and components which have been subjected to a general overhaul. Clauses 8.2 to 8.10 shall apply accordingly, in so far as warranty is granted by BHS.

- 7.3 If the parties agree that a used product or component should be repaired or subjected to a general overhaul before delivery, a major repair or general overhaul may make it necessary for BHS to furnish a new operating manual for the overhauled or repaired system. This will cause considerable costs not covered by the calculated price. In this case, the Customer undertakes to prepare an operating manual itself which complies with all legal requirements for the operation of the Product at the site of installation. BHS will remind the Customer of this obligation again in writing at the time of delivery. The Customer shall hold BHS harmless against any and all claims arising out of or in any way associated with the lack of such operating manual and shall indemnify BHS in particular from any and all expense including litigation costs and attorney's fees.
- 7.4 Unless otherwise provided in this section, the other provisions of these Sales Conditions shall apply.

8. Claims based on Defects (Warranty)

- 8.1 The warranty period shall be twelve (12) months from the date of delivery or, in the case of the Customer delaying acceptance, from the date of notification of the Products' readiness for delivery.
- 8.2 Any agreement to perform a formal technical acceptance shall not have any effect on the start of the warranty period as defined in Clause 8.1. BHS and the Customer will inspect the Product or Products for conformity with the Contract within one week after BHS's notice of the Products' readiness for acceptance and then sign the required acceptance protocol. If any deficiencies or variations (non-conformities) are found which do not considerably affect the operability of the Product or Products for the contractual or customary use, the Customer will list such deficiencies or variations in the acceptance protocol and then sign it. If the Customer does not participate in the acceptance procedure or does not co-

operate 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. If partial shipments have been agreed upon, the Customer shall also accept such part shipments.

- 8.3 If no acceptance procedures have been agreed upon, the Customer shall inspect the Product immediately upon receipt of any defects or variations from the contractual specifications (non-conformity with the Contract) and, if applicable, notify BHS accordingly in writing. In the event of any hidden defects or variations, this provision shall apply from the time the Customer first detects such hidden defects or variations.
- 8.4 BHS warrants that the Products are in conformity with the specifications stated in the Contract and, if stipulated 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 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. 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 that it desires such a general statement to be binding and part of the Contract before the Contract was made and BHS has agreed in writing to comply with its wish.

- 8.5 BHS 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, not later than 18 months (for overhauled parts: twelve months) after the original delivery of the part.
- 8.6 Within the warranty period, BHS 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. If a replacement or repair with respect to the same defect is repeatedly unsuccessful, or if BHS 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 rescind from the Contract after having set a reasonable time limit and having advised BHS of the intended legal consequences. Where the UN Sales Convention is applied, the Contract can only be declared avoided towards BHS in the case of a fundamental violation of the Contract within the meaning of Art. 25 of the UN Sales Convention.

- 8.7 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 reasonable costs for packaging and transport of defective parts that have to be sent back may only be refunded by BHS 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 with the removal of the part from the machine or plant by BHS. On the demand by BHS, the Customer shall return removed parts to BHS.
- 8.8 Any claim for damages because of a defect (breach of contract) due to Warranty requires that BHS is responsible for such defect, i.e. that either this defect can be attributed to BHS's sphere of risk and BHS is at fault or that BHS has granted a guarantee for a characteristic state and quality of the Product.

In all other cases the liability of BHS, with the exception of cases of intent and gross negligence shall be limited to the scope of any damages that BHS was able to foresee at the time of concluding the Contract.

Again with the exception of intent and gross negligence the liability of BHS, its corporate officers and employees shall be limited to:

- a maximum of three times the total price of the individual defective Product (see Clause 3.1), when the unit price of the Product does not exceed 50,000 Euros;

amounts to between 50,000 and 1 million Euros but up to a maximum of Euros 1,000,000 and

- a maximum of 1 million Euros, when the unit price of the Product exceeds 1 million Euros.

The total liability amount resulting from a contractual relationship due to Warranty and guarantee shall be limited to the following based on the total price of the Products delivered under the Contract:

- a maximum of four times the purchase price, when the total price of all products does not exceed 200,000 Euros,
- a maximum of twice the purchase price, when the total price amounts to between 200,000 and 1 million Euros but up to a maximum of Euros 1.50 million Euros and
- a maximum of 1.5 million Euros when the total price exceeds 1 million Euros.

The total price shall be the net price excluding value added tax as well as excluding delivery and installation costs.

- 8.9. Any liability related to indirect damage, consequential damage, loss of production or lost profit shall be excluded.
- 8.10. 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 at the time of concluding the Contract. If the Customer fails to co-operate with BHS in case of any replacement or repair or refuses acceptance of such remedy, all further Warranty shall be excluded.
- 8.11. The Product's technical data or features themselves shall not be deemed to be guaranteed properties or characteristics if not expressly agreed upon in writing between the parties or confirmed in writing by BHS.
- 8.12. BHS may not perform the correction of defects if the Customer is in delay with its due payments or obligations to co-operate.

9. Liability

- 9.1 In the event of any breach of contract or duties from a provisional agreement, unlawful acts or in the presence of any other legal cause not specifically mentioned in these Sales Conditions, BHS, its corporate officers and employees shall be liable only in case of intent or gross negligence.

In the case of impossibility or inability to perform, delay or violation of any other principal contractual obligation, BHS shall not be liable only in cases of very slight negligence. In all other cases BHS shall be unlimitedly liable in principle unless otherwise specified in these Sales Conditions (Clauses 8.8, 8.9, 9.4). Only the amount of damages shall be limited to the typical damage foreseeable for BHS at the time of concluding the Contract and in particular

- a maximum of four times the purchase price, when the total price does not exceed 200,000 Euros,
- a maximum of twice the purchase price, when the total price amounts to between 200,000 and 1 million Euros but up to a maximum of 1 million Euros and
- a maximum of 1.50 million Euros when the total price exceeds 1 million Euros.

The total price shall be the net price excluding value added tax as well as delivery and installation costs.

- 9.3 If several claims for damages due to defects (Clause 8.8), a violation of the principal obligations mentioned above (item 9.1, 2nd paragraph) or due to any other legal cause (Clause 9.1, first paragraph) arise in connection with the Contract at the same time or one after the other, BHS's total liability, with the exception of intent or gross negligence, shall be limited in connection with the Contract to

- a maximum of four times the purchase price for Contracts with a total Contract value not exceeding 200,000 Euros,
- a maximum of three times the purchase price for Contracts with a total Contract value between 200,000 and 1 million Euros, and
- a maximum of 5 million Euros for Contracts with a total price exceeding 1 million Euros.

The total price shall be the net price excluding value added tax as well as excluding delivery and installation costs.

- 9.4 Any liability related to indirect damage, consequential damage, loss of production or lost profit shall be excluded.
- 9.5 Any liability of BHS for life, body and health shall be assumed by BHS within the scope provided by the applicable law.

10. Reservation of Title

- 10.1 Title to and ownership of the Product or Products shall remain with BHS until the Customer has satisfied all claims of BHS resulting from and in connection with the Contract in question.
- 10.2 BHS may after written notice to the Customer and the passing of a reasonable grace period assert its claim for surrender of the Products, after which the Customer shall immediately surrender the Products to BHS, if the Customer is in delay with its payment of the purchase price in part or as a whole and/or if it becomes known after the conclusion of the Contract that BHS's claims for payment are at risk due to an inability to perform on the part of the Customer.
- 10.3 With the conclusion of a Contract, the Customer irrevocably agrees to permit BHS to enter its premises and sites for the purpose of taking possession of the Products.
- 10.4 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 named as the sole beneficiary in the policy. The insurance policy shall be forwarded to BHS. In the case of damage, the use of the insurance payment shall be at the discretion of BHS.
- 10.5 Should this reservation of title not be legally effective according to the state law of the country, in which the Products are located, the protection of BHS's contractual rights, which this state law provides and which corresponds to such reservation of title and assignment shall be deemed to have been agreed upon. The Customer undertakes to co-operate with BHS in the furnishing of collateral security. Any related costs in relation to the collateral security shall be borne by the Customer.

- 10.6 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 shall immediately be reported to BHS identifying the creditor.
- 11. Confidentiality**
- Customer shall not disclose to any third party BHS Information as defined in Clause 3.4 of these Sales Conditions or any other information provided by BHS unless necessary within scope of the contractual intended use of the Product(s) at the Customer's premises. In case of any violation of this confidentiality by the Customer or any of its corporate officers, employees and/or other persons connected to it, the Customer shall pay, subject to any further claims, a penalty of 50,000 Euros for each act of violation. Upon request by BHS, the Customer shall provide to BHS all information relating to how the BHS Information was used and in particular to whom it was disclosed.
- 12. Miscellaneous**
- 12.1 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.
- 12.2 The Customer shall not withhold, set-off or reduce payments against BHS unless its claim has been established by a final court decision.
- 12.3 Should any provision of these Terms and Conditions of Delivery 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 any regulation specified in this Contract becomes invalid.
- 12.4 The Contract between BHS and the Customer shall be governed by and interpreted in accordance with the law of the People's Republic of China, including the provisions of the UN Sales Convention (UNCITRAL), if applicable. In case of any discrepancy or contradiction between the English language version and a non-English language version, the English language version shall prevail.
- 12.5 Any dispute arising from or in connection with these Sales Conditions or the contract between BHS and the Customer shall be submitted to Shanghai International Economic and Trade Arbitration Commission ("SHIAC") for arbitration which shall be conducted in accordance with the arbitration rules of SHIAC in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

