

BES GmbH - General Terms and Conditions of Delivery and Payment as of: February 2019

§ 1

Contractual Basis

- (1) Our offers, order acceptances, deliveries and services are effected on the sole basis of the General Terms and Conditions on hand.
- (2) Deviating contractual conditions shall not become subject matter of the contract even if we do not expressly contradict them, or if we execute the contract unreservedly.
- (3) Our Terms and Conditions are considered the basis for all and any supplier relationships, even if no express reference is made to these Conditions in quotes, orders or order acceptances.
- (4) Our General Terms and Conditions of Delivery and Payment are valid for any future business transactions with the Client in the version valid at the time of conclusion of the contract in each case.
- (5) Our General Terms and Conditions of Delivery and Payment only apply in relation to companies or their equivalent.
- (6) Promises, guarantees or oral arrangements by our representatives and employees are invalid unless they are confirmed in written form by the company management.

§ 2

Order, Conclusion of Contract, Scope of Services

- (1) Our quotations are non-binding. The order issued by the Client is regarded as the binding offer. A supply and service contract shall not be deemed concluded until a written confirmation of order has been issued by us. Technical modifications and other changes to the order are reserved as far as this is reasonable and does not result in any impairment regarding quality and usability.
- (2) Technical data, descriptions and other statements in catalogues, brochures, drawings and marketing documents shall not be deemed as a guarantee of quality or durability.
- (3) Our services are specified in the order confirmation. We are entitled to have services necessary for the execution of the contract carried out by third parties.
- (4) The Client shall be responsible for the accuracy of the order. He shall therefore supply all the necessary information completely and in due time at his own expense in order to enable us to carry out the order in accordance with the agreement. The Client shall be responsible for the complete and precise representation of the existing building structure by the plans, drafts, descriptions and other documents supplied by him. Furthermore he shall be responsible for the timely realisation of the constructional requirements for the installation, as far as this is necessary for the execution of the contractual services provided by us.
- (5) All rights to descriptions, plans, drafts and other documents – including such in electronic form – and materials provided to the Client by us, particularly any rights of exploitation, duplication and publication, are reserved. The Client shall treat the mentioned documents and materials as confidential, and only disclose them to third parties after our prior consent.
- (6) Materials protected by copyright include in particular the software purchased by the Client and the corresponding documentation. The Client is entitled to use the software in accordance with the Terms and Conditions of Use as stated in the order confirmation, and to transfer the software to the specified user. With transfer to the subsequent user, the right to use the software is passed on to the subsequent user. At the same time the right of the Client to use the

software expires. All further rights for the usage and exploitation of the software are reserved. Neither the Client nor the subsequent user are allowed to use the software and/or a modified or changed version of the software at the same time on different computers or to distribute copies – identical or modified – of the software.

- (7) We provide software / portal services exclusively on the basis of these terms and conditions. This applies in particular even if the customer uses general terms and conditions and these conflicting or differ from the terms and conditions listed here. The terms and conditions listed here also apply if the customer executes the order without reservation, as far as he is aware of conditions of the customer that conflict with or deviate from the conditions listed here.

We may change the software / portal services with a reasonable notice period, which will become effective upon publication on our website.

A contract requires the provision of complete and correct data. The customer undertakes to inform us immediately about changes of the contact data as well as other data necessary for the execution of the contract.

The software / portal service is provided via the transport medium Internet. The contract is concluded with the activation of the access code by us and is valid for a period of one year. It will be renewed for a further year unless it is terminated in writing by a party giving three months' notice to the end of the contractual year or the software / portal services are not paid on time. The right to immediate termination without notice remains unaffected.

We provide the software / portal services for the control and management of energy supply systems in buildings (hereinafter systems).

The customer is given the opportunity to log in and to configure, remotely control and visualize the facilities to be controlled by him.

The availability of the software / portal service and the data paths up to the transfer point into the Internet depends on the server operator and his communication equipment. This availability cannot be guaranteed by us and we assume no liability for it. We point out that other restrictions or impairments of the services provided by us can arise, which are outside our sphere of influence. This includes, in particular, acts of third parties who do not act on our behalf, technical conditions of the Internet that we cannot influence, and force majeure. Likewise, the hardware and software or technical infrastructure used by the customer (eg DSL connection) may influence our services. As far as such circumstances influence the availability or functionality of the service provided by us, this has no effect on the conformity of the service provided by us.

If possible, we will inform the customer by e-mail about foreseeable failures, in particular due to maintenance work, at least 24 hours before their start. The parties are aware that there is no technical procedure, that the data processing program and the transmission system are error-free, in particular not for the accuracy of the information contained in the system and for the functionality of the data structure.

If there is a defect, the customer's claims are limited to the right of subsequent performance. He reserves the right to reduce the remuneration or to withdraw from the contract if the supplementary performance fails three times. He is not entitled to more than three supplementary performance attempts. Further rights are excluded. The above provisions also apply to the benefit of our employees or our vicarious agents.

Our obligation arises from the service description of the respective software / portal service. Other promises, performance promises or ancillary agreements are only effective if confirmed in writing by us. We can change our services, as far as this is reasonable considering the interests of the customer and of us for the customer.

If we provide additional services without additional payment, the customer has no claim for fulfillment. We are entitled to discontinue, change or only offer for a fee such services previously provided without remuneration within a

reasonable period of time. In such case, we will inform the customer.

We are obliged to the customer for technical support only in the context of the contractual agreements or the service description. In addition, we do not provide the customer with free support.

Performance and delivery dates by us are only binding if they have been confirmed in writing. We are exempted from the obligation to perform as long as the customer does not perform required cooperation, not in time or not properly.

The customer can only set off against claims from us with undisputed or legally established claims and only exercise a right to refuse performance for such claims. The customer is not entitled to assign rights under this agreement without our written consent.

We assume no liability to the customer or third parties for errors, interruptions, delays, wrong data or messages or other disturbances, no matter in which they have their cause.

We are liable for damages only in the case of intent and gross negligence on our part or by one of our vicarious agents. If we or one of our vicarious agents violate an essential contractual obligation (cardinal obligation) in a manner endangering the purpose of the contract, the liability is limited to the typical damage that we reasonably foresaw upon conclusion of the contract, unless the breach of duty is intentional or grossly negligent.

This restriction does not apply to injury to life, body and / or health and to liability under the Product Liability Act.

In the case of data loss, the liability is limited to the cost of their recovery from the customer's data.

§3 Copyrights:

- (1) We grant the customer an own right of use limited to the duration of the associated contractual relationship with our own and third-party software, programs and scripts. We do not warrant that the hardware and software used and provided will meet the requirements of the customer, that it will be suitable for specific applications, or that it will be crash-free, error-free and free from malicious software. It is not permitted to grant third parties rights of use. In particular, a sale is therefore not allowed. The customer will delete copies of the licensed software after termination of the contractual relationship and discontinue use. For open source programs, these terms and conditions do not apply, only the associated license conditions apply. By the remainder, the license terms of the respective manufacturers apply.
- (2) During the contract period, the customer may use the content, texts, images, animations, film and sound material provided by us for the design of the contractual Internet presence. It is not permitted to grant third parties rights of use. After completion of the contract, the materials are to be deleted. Unless otherwise specified, it is permitted to view and download the materials for personal, non-commercial use or for informational purposes, provided that all copyright and proprietary notices in the original materials or all copies thereof are retained. Customer may not modify, reproduce or publicly display, perform, post, transmit, distribute or otherwise use the content for any public or commercial purpose.
- (3) The software and materials may only be used for processing within the database of the customer in our system.
- (4) The aforementioned right of use does not transfer ownership of the software to the customer.
- (5) A portal service license only entitles to use in connection with the hardware whose device number was recorded at the time of registration. When replacing the hardware associated with this portal service license, the affected license must be renewed. The terms and conditions valid at the time of renewal may differ from current ones.

- (6) Use of the portal service software and for other devices / hardware of the customer is only permitted by acquiring further licenses.
- (7) The use of the software / portal service is only permitted by the customer or his personally registered employee.
- (8) In the event of a breach of this provision, we shall be entitled to block the access by which the software / portal service is used unlawfully or the device / hardware for the software / portal services is used unlawfully until proof of legality.

§ 4 Prices

- (1) All prices are net ex works or warehouse, plus the legal rate of value-added tax. Costs of packaging, transport and insurance as well as any additional costs are only included if the net invoiced value of the goods exceeds € 2500. With a net invoiced value of less than € 2500, the mentioned costs will be invoiced separately. Delivery within Germany and Austria will be to kerb unless otherwise agreed in writing.
- (2) The rates agreed upon with conclusion of the contract or, if nothing was arranged, the usual rates according to our pricelist are applicable to our services during planning and start-up of the appliance or similar. Modified or additional services are charged on the basis of the original price calculation.
- (3) Quotes and cost estimates are charged even without an express agreement if they require planning and developing efforts that exceed purely preliminary investigations.
- (4) Payment for our deliveries and services shall be made by cash in advance or immediately on receipt of the invoice without deductions, unless otherwise agreed. Payment by cheque or bill of exchange is not permitted.
- (5) With custom-made or non-stock products we are entitled to demand payment of 100 % of the net invoiced value on receipt of the written order confirmation, unless otherwise specified in the order confirmation.
- (6) The statutory provisions apply in the case of payment arrears. After expiry of the due date stated in the invoice, the client shall be deemed to be in default of payment in accordance with § 286, subsection 2, number 2, BGB (German Civil Code).
- (7) The Client is entitled to execute offsets or retentions only in so far as the respective counterclaim has legal effect or is not contested or acknowledged by us. Furthermore, the Client's right of retention is subject to the fact that the given counterclaim derives from the same contractual relationship as our claim.
- (8) If the Client fails to pay the due invoice amount, if the financial circumstances of the Client deteriorate after conclusion of the contract, or if we receive unfavorable information pertaining to the Client which indicate impaired creditworthiness or insolvency on the part of the Client, and if the Client is unable to pay or unwilling to pay, we are entitled to withhold our services and deliveries pending advance payment of the total invoice amount, or to declare all outstanding debts immediately payable after delivery or service performance. Should the Client refuse advance payment or fail to pay despite the appointment of a date, we are entitled to cancel the contract and claim damages. If the Client files for insolvency, or insolvency proceedings are opened, or opening is rejected due to insufficiency of funds, we shall have the right to cancel the contract and claim damages without further conditions. On receipt of the letter of cancellation all outstanding debts and claims for remuneration become due.

§ 5

Period of Delivery and Performance, Delay in Performance

(1) Our observance of the agreed periods and deadlines for delivery and performance is subject to prior clarification of all technical and commercial issues as well as to the timely and proper fulfilment of the Client's obligations. Should the Client fail to properly and timely fulfil his obligations (e.g. providing documents or installation requirements, paying agreed advance sums), the periods shall be extended accordingly. Agreements on periods and deadlines are subject to the precondition that our suppliers and cooperation partners fulfil their obligations towards us. We are not liable for delays due to force majeure or other unpredictable, extraordinary disturbances for which we cannot be held responsible, such as breakdown due to fire, water or similar occurrences, failure of production plants and machines, strike, lockout, government regulations etc. -also in third-party companies contracted by us and their subcontractors – even if binding periods and deadlines were previously agreed.

(9) In case of default, our obligation to pay damages is limited in accordance with the regulations as set down in § 11.

(2) We are entitled to make partial deliveries and provide partial services within the agreed delivery and performance periods, in so far as this is reasonable for the Client.

§ 6

Shipping, Transport and Packaging Costs, Transfer of Risk

(1) With a net invoiced value of more than 2500 €, delivery within Germany and Austria is free to kerb, unless expressly otherwise arranged in writing. With a net invoiced value of less than € 2500, these costs will be invoiced separately. Shipping method is chosen by us.

(2) Risk passes to the Client at the time the goods are handed over to the freight forwarder or carrier, or latest on departure from our factory or warehouse, even if the goods are delivered free and/or insured against transport damage. If an acceptance is required, this shall be decisive for the transfer of risk. If dispatch or acceptance fail or are delayed for reasons for which we are not responsible, risk passes to the Client at the date of notification of readiness for dispatch or acceptance.

§ 7

Retention of Title

(1) All delivered goods shall remain our property (reserved goods) until all claims resulting from the business relationship in question have been settled, including, in particular, any outstanding claims from previous transactions. This also applies for future claims.

(2) The Client undertakes to diligently handle the reserved goods. He is particularly obliged to insure the reserved goods at his own expense for their replacement value against loss, damage and destruction, such as caused by fire, theft, water or similar risks. The Client assigns as of now all claims arising from the insurance contract to us. We accept the assignment.

(3) The Client is not permitted to pledge or assign the reserved goods as security. In the event of breach of contract by the Client, particularly in respect of payment arrears, we are entitled after a reminder to retrieve the reserved goods, and the Client is obliged to surrender the reserved goods. The enforcement of the retention of title and the seizure of the retained goods shall not be considered as a termination of the contract.

(4) The Client is entitled to resell retained goods in the proper course of business, provided he is not in default of payment. This entitlement does not hold true, insofar as the Client transfers or pledges claims against his contractual partner resulting from the resale of the goods, to a third party, or concludes a prohibition of assignment in advance. In case of

reselling the reserved goods, the Client shall reserve the property rights until full payment of the purchase price. The Client assigns to us as of now any claims accruing from the resale of the reserved goods up to the value of the reserved goods which we have delivered plus VAT, together with all ancillary rights. We hereby accept the assignment.

(5) The Client is entitled to collect the claims assigned to us within the bounds of proper business conduct, as long as he satisfies his payment obligations towards us. Regarding the claims assigned to us, the Client is not entitled to arrange with his customers an open account relationship or a non-assignment clause, or to assign or pledge the assigned claims to third parties. If, against sentence 2, an open account relationship exists between the Client and his customers, the claim assigned in advance also relates to the recognised balance or, in the event of bankruptcy of the customer, to the then existing balance.

(6) The Client is entitled to collect the claims assigned to us within the bounds of proper business conduct, as long as he satisfies his payment obligations towards us. Regarding the claims assigned to us, the Client is not entitled to arrange with his customers an open account relationship or a non-assignment clause, or to assign or pledge the assigned claims to third parties. If, against sentence 2, an open account relationship exists between the Client and his customers, the claim assigned in advance also relates to the recognised balance or, in the event of bankruptcy of the customer, to the then existing balance.

We will, however, not make use of this entitlement, if the Client duly fulfils his payment obligations, if no initiation for insolvency proceedings has been filed, and if the Client has not ceased making payments. In the event of one of the mentioned cases, the Client shall be obliged to notify us of the claims assigned and their debtors, to furnish all particulars required for collection, to hand over any pertinent documents.

(7) In the event of seizures or other interventions by third parties, the Client shall inform us immediately. The Client shall bear all costs and losses, provided the third party is not able to refund the judicial costs and extra-judicial costs incurred by us in this connection.

(8) Any processing or reworking of the reserved goods by the Client shall always be done on our behalf as supplier, but without binding us. If the reserved goods are processed or inseparably blended or combined with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the invoice value of the reserved goods (final invoice amount including VAT) to the other objects at the time of the processing, blending or combining. For the item produced as a result of this processing, the same applies as to the purchased goods delivered under reserve. If the processing, blending or combining of the reserved goods is effected in such a way, that the product of the Client is to be considered the main product, then it is understood that the Client will convey co-ownership to us on a pro rata basis. The Client shall safeguard the sole or joint property thus created for us. As long as he satisfies his obligations towards us in due time, the Client shall be entitled to have the products newly created by processing, blending or combining at his disposal within the bounds of proper business conduct excluding pledging and assignment. The Client shall assign as of now all claims arising from the sale of the newly created products, to which we own property rights, to us on a pro rata basis as a security.

(9) If the reserved goods are installed by the Client as an essential component on the estate of a third party, the Client shall assign to us as of now all remuneration claims towards said third party or any other concerned party to the amount of the value of the reserved goods and the services provided by us, including any ancillary rights, plus VAT. We hereby accept this

assignment. The above provisions under § 7 (5) and § 6 (6) apply accordingly.

- (10) At the Client's request, we undertake to release, at our discretion, the securities to which we are entitled to the extent that the value of our securities exceeds the value of the debts to be secured by more than 10%.

§ 8 Acceptance

If we have, in addition to the delivery, provided assembly work or other acts of cooperation during the installation and start-up of the appliances and if an acceptance is agreed upon, the acceptance shall be performed after ready-to-use installation and start-up of the appliance. If we demand the acceptance of our services, the Client has to perform the acceptance within 12 working days, unless essential defects in our performance are in evidence. Acceptance shall be deemed to have been granted if the Client fails to perform the acceptance within 12 days after receipt of notice, in disregard of his obligation to do so.

§ 9 Liability for Defects

- (1) The Client shall inspect the delivered goods or performed services immediately on receipt or after notice of operational readiness, respectively, and within 24 hours inform us in written form of any defects.
- (2) If the Client fails to notify us, then the delivered goods shall be deemed accepted, unless the defect is such that it could not be detected upon inspection.
- (3) If a defect in the delivered goods becomes apparent at a later date, this has to be indicated in written form immediately after discovery, otherwise the delivered goods shall be deemed accepted even in consideration of the defect.
- (4) In case of defective delivery or performance, we are, at our discretion, entitled to either remedy the defects without charge, or supply replacement free of charge against return of the defective goods. If we are unwilling or unable to make supplementary performance, if such performance is delayed beyond reasonable deadlines for reasons for which we are liable, or if such performance fails in any other way, the Client is, at his discretion, entitled to cancel the contract or reduce the sales price. In cases of minor defects however the Client is only entitled to reduce the sales price.
- (5) Should the customer incur damage or wasted efforts caused by the delivered goods or performances, our liability for this shall be as set out in § 11.
- (6) Liability is excluded for damages resulting from improper or careless treatment, excessive strain, faulty assembly or installation, special outside influences not foreseen under the terms of the contract, non-observance of operating instructions, improper modifications or interventions on the part of the Client or a third party, and damages resulting from improper or neglected maintenance.
- (7) Should the use of the delivered goods infringe domestic industrial property rights or copyrights, we shall, at our cost, obtain the right to principally enable the Client to continue to use the delivered goods or to modify the delivered goods in a manner acceptable to the Client so that the copyright infringement no longer exists. If this is not possible in a manner acceptable to the Client, then the Client is entitled to cancel the contract. In such a case, we are also entitled to cancel the contract.
- (8) Beyond that, we will release the Client from any undisputed or legally effective claims by the holders of the intellectual property rights. Our liability in such a case shall be limited to the provisions of § 11.

- (9) Changes in the design and / or execution, which affect neither the functionality nor the value of the delivery item, remain expressly reserved to the supplier and do not entitle to the notice of defects.

- (10) Unless otherwise specified by the purchaser, the materials shall be named after the supplier's choice in accordance with his experience. The recommendation does not release the customer from checking the suitability for his application.

§ 10 Receipt and return:

- (1) Returns may only be made with our written consent.
- (2) Deliveries are to be accepted by the purchaser, even if they have insignificant defects.
- (3) Returns which are not the responsibility of the supplier shall be charged with a cost contribution of 20% of the value of the goods, but at least 50 €. Shipped freight costs, packaging, testing and processing costs are also calculated.
- (4) For custom-made goods, a return is excluded in principle, unless there is a case of default in the sense of the terms and conditions.

§ 9 Liability

- (1) We are liable for damages or wasted efforts – irrespective of the legal ground – only if the damages or wasted efforts
 - were caused by us or one of our vicarious agents by culpable breach of an essential contractual duty; essential contractual duties are duties that must be fulfilled in order to achieve the objective of the contract; or
 - are due to a grossly negligent or intentional violation of obligations on our part or the part of our vicarious agents.
- (2) We are not liable for damages or wasted efforts, which were caused by consulting measures or information not separately charged, unless in cases of intentional or grossly negligent breach of obligations, in as far as the breach of obligations does not constitute a material defect of the delivered goods according to § 434 BGB (German Civil Code).
- (3) Should we be liable for the breach of an essential contractual duty, without gross negligence or deliberate acts, our liability is limited to foreseeable and typical damages. In such a case we are not liable for unforeseeable consequential damages or lost profit of the Client.
- (4) We are not liable for indirect losses accruing to the Client due to the assertion of claims from contractual penalties.
- (5) The above limitation of liability does not apply if our liability is mandatory due the provisions of the German Product Liability Act or if the claims arise from damage to life, body or health.
- (6) If a quality that was guaranteed by us is missing in the delivered goods, we are liable only for damages caused by the missing quality.
- (7) Any further liability for damages is excluded without consideration of the legal nature of the asserted claim. Insofar as liability for damages is excluded or limited, this also applies in regard to the personal liability for damages of our employees, members of staff, co-workers, representatives and vicarious agents.

§ 10
Limitations of Claims

- (1) The period of limitation is 12 months from the statutory commencement of the limitation period, unless otherwise stated in the below provisions.
- (2) Claims for defects in newly produced goods delivered by us, which were used in accordance with their common manner of use for construction and caused the defectiveness of the building, shall be limited to five years. The same applies to claims arising from works performed by us in construction and to works to be provided by us, the success of which consists in the performance of planning or monitoring services (§ 634 a, subsection 1, sentence 2, BGB).
- (3) The limitation period in the case of a delivery recourse in accordance with §§ 478, 479 BGB is not affected.¹
- (4) The statutory periods of limitation shall apply for claims for damage to life, body or health, claims under product liability legislation and claims arising from legal defects in the delivered goods, consisting of a material right of a third party, on the basis of which that party may demand the surrender of the delivered goods. The statutory periods of limitation shall also apply to claims on the part of the Client based on the fact that we have maliciously concealed a defect or violated an obligation by intent or gross negligence.

§ 11
Place of Performance, Place of Jurisdiction and Applicable Law

- (1) Place of performance and exclusive place of jurisdiction for all claims between us and commercial businessmen, legal bodies governed by public law or assets under public law is Mainz, unless peremptory provisions of the law prescribe anything to the contrary. We have the right to institute legal proceedings against a client at his legal place of jurisdiction.
- (2) All the legal relationships between the Client and us shall be governed by the German legislation applicable for legal relationships of domestic parties, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

§ 12
Binding Nature of the Contract

- (1) Should any of the above provisions be ineffective in part or as a whole, then this shall not affect the validity of the remaining provisions.
- (2) Data becoming available in connection with the business association are stored in files by the companies of the BES Group and transmitted between them. This does not include details about personal or material circumstances of an identified or identifiable natural person.

BES GmbH
as of: February 2019

¹ The limitation period for claims from recourse can be shortened if an adequate compensation is granted to the entrepreneur (e.g. rebates, deferral).