

- 1. Application of these Terms**
- 1.1 The following terms apply to the exclusion of all possibly divergent terms of business of the CUSTOMER to business relations between Bizerba SE & Co. KG (BIZERBA) and the CUSTOMER, insofar as such business relations include the delivery of contractual products or services (hereinafter referred to collectively as the PRODUCTS) by BIZERBA to the CUSTOMER. PRODUCTS in the sense of these provisions shall not include paper and labels, ticket rolls, linerless, thermal transfer ribbon, packaging films and similar products, which are governed by the BIZERBA Terms of Delivery for Paper and Labels and Consumables.
- 1.2 Orders placed by BIZERBA on the basis of pre-formulated terms of purchase of the CUSTOMER shall always be deemed to have been brought about according to the BIZERBA Terms and Conditions, even if the terms of the CUSTOMER are not expressly rejected.
- 1.3 If the CUSTOMER is already familiar with the present Terms and Conditions, they shall also apply to future transactions involving the PRODUCTS without being made known anew. The delivery or acceptance of PRODUCTS is deemed to be acknowledgement of the present Terms.
- 1.4 Agreements amending or supplementing these Terms, covenants and terms of the CUSTOMER are only valid if they are confirmed in writing by BIZERBA. Commercial agents and sales representatives of BIZERBA are not authorized to issue binding declarations.
- 2 Offer**
- 2.1 Offers made by BIZERBA are subject to change and not binding unless otherwise stated in the text of the specific offer. Specifications may be modified by BIZERBA by way of a simple notification at any time after the offer is made, until the order is placed by the CUSTOMER. Modifications to the specifications are also possible after an order is placed, owing to technical necessities.
- 2.2 If, in an exceptional case, there is a binding offer without a deadline for acceptance, it may be accepted within 14 days (receipt by BIZERBA) after the offer is made in that the CUSTOMER places an order.
- 2.3 Costs estimates, drawings, general information as to qualities and public statements such as advertising statements and other documents (hereinafter: DOCUMENTS) relating to the offer merely provide orientation for the CUSTOMER and shall not be understood as agreements as to qualities or as any assumption of a warranty for qualities of the PRODUCT. BIZERBA retains full ownership rights and the copyright exploitation rights to the DOCUMENTS. The DOCUMENTS may only be made available to third parties with the prior written consent of BIZERBA and shall be returned promptly if no order is placed.
- 3 Orders, Confirmation of Orders**
- 3.1 Orders shall be binding on the CUSTOMER.
- 3.2 Upon placing the order, the CUSTOMER shall provide binding notification of the intended place of deployment of the PRODUCT ordered. It is pointed out that various PRODUCTS, especially in connection with scales systems, require a specific configuration which takes the place of deployment into account.
- 3.3 Orders shall be accepted through a written order confirmation issued by BIZERBA, unless the order is placed in response to a binding offer. Orders shall also be deemed accepted if BIZERBA fails to declare its refusal within 20 days after receipt of the order. The CUSTOMER waives receipt of an acceptance declaration in the sense of Sec. 151, first sentence, second alternative, German Civil Code (BGB). For all other matters the orders placed and/or order confirmations diverging from the order shall be deemed accepted upon acceptance of the PRODUCTS delivered.
- 4 Prices and Payment**
- 4.1 All prices apply ex works (EXW Incoterms 2010) from the relevant BIZERBA production site, exclusive of packaging, plus the statutory VAT in force on the delivery date.
- 4.2 BIZERBA shall not increase prices within the first six (6) weeks after conclusion of the agreement. Thereafter BIZERBA reserves the right to adjust prices in accordance with Sec. 315, German Civil Code (BGB).
- 4.3 As a matter of principle, invoice amounts are payable in full within 14 days of the invoice date; in principle the CUSTOMER has no right to a cash discount.
- 4.4 The CUSTOMER is not entitled to retain or set-off payments owing to counter-claims that are not based on the present contractual relationship. In addition, the CUSTOMER may only exercise a right of retention on the basis of counter-claims that are undisputed or have been established by final judgment.
- Where claims are based on a breach by BIZERBA of obligations under the present contractual relationship, the CUSTOMER's counter-claims shall remain unaffected.
- 4.5 All claims of BIZERBA shall become due immediately in case of a significant deterioration in the CUSTOMER's financial situation and in case of other circumstances significantly impairing its creditworthiness. Claims shall become due immediately especially in the following cases:
- if the CUSTOMER is at least 4 weeks in default on significant claims, and/or
 - if the financial situation of the CUSTOMER or its personally liable partner deteriorates significantly or is substantially jeopardized, or is jeopardized in the amount of the collateral furnished for this Agreement,
 - if the CUSTOMER dies or its personally liable partner dies or is replaced,
 - if the CUSTOMER's business operations are discontinued;
 - in case of the imminent insolvency or over-indebtedness of the CUSTOMER.
- Where claims fall due immediately, BIZERBA is also entitled to perform solely after payment of the amounts due or against advance payment or furnishing of collateral, and may withdraw from the agreement following an unsuccessful demand in this respect.
- 4.6 If the CUSTOMER violates terms of payment continuously or severely, after a reasonable deadline for payment has expired unsuccessfully BIZERBA is entitled to withdraw from the agreement and, in particular, to require damages in lieu of performance. Liability for damage caused by default shall remain unaffected.
- 4.7 Place of performance for payment obligations of the CUSTOMER is Balingen, Sec. 270(1) of the German Civil Code (BGB) shall remain unaffected.
- 4.8 Commercial agents and sales representatives of BIZERBA are not authorized to enter into agreements on collection or deferment.
- 4.9 Price calculation shall be based exclusively on the performance, number of articles and quantities established by BIZERBA, unless the CUSTOMER objects promptly.
- 5 Delivery Period**
- 5.1 Delivery periods indicated by BIZERBA before confirming the order are approximate, solely the delivery dates indicated in order confirmations issued by BIZERBA are binding.
- 5.2 Calculation of the delivery period shall commence upon dispatch of the order confirmation but not before receipt of an agreed advance payment, clarification of all technical details and not before the CUSTOMER has met all the requirements imposed on it for execution of the transaction.
- 5.3 If BIZERBA is prevented from delivering in good time by unforeseeable events or events occurring through no fault of its own, which could be prevented by exercising reasonable care, the delivery period shall be extended appropriately.
- 5.4 Provision of notification of readiness before the end of the delivery period shall be deemed compliance with that period. If shipment has been agreed, the delivery period has been observed when the PRODUCTS leave the works or when readiness for shipment has been notified.
- 6 Reservation of Proper Supply to BIZERBA**
- 6.1 Insofar as BIZERBA has concluded a congruent covering transaction with a third party (SUPPLIER) for the performance of its own delivery obligations towards the CUSTOMER, BIZERBA reserves the right to withdraw from the agreement with the CUSTOMER if the SUPPLIER fails to fulfil its delivery obligations towards BIZERBA according to the agreements.
- 6.2 If the SUPPLIER fails to delivery properly, BIZERBA shall inform the CUSTOMER without undue delay.
- 6.3 If the right to withdraw is exercised according to Clause 6.1, BIZERBA shall promptly return to the CUSTOMER any consideration it has paid. Further claims for damages accruing to the CUSTOMER are governed by Clauses 11 and 12.
- 6.4 If the SUPPLIER can only supply BIZERBA in part, BIZERBA may also make part deliveries to the CUSTOMER provided the latter may be reasonably expected to accept them. In case of part delivery, the right to withdraw according to Clause 6.1 relates to the remaining delivery obligation of BIZERBA following the part delivery.
- 7 Delivery, Shipment and Passing of Risk**
- 7.1 As a matter of principle delivery shall be ex works (EXW Incoterms 2010) from the relevant BIZERBA production site. As a matter of principle BIZERBA does not owe shipment of the PRODUCTS to the CUSTOMER.
- 7.2 The risk of accidental loss or accidental deterioration of the PRODUCTS shall pass to the CUSTOMER upon notification of making available, and no later than upon handing over of the PRODUCTS to the haulage company.
- 7.3 If shipment by BIZERBA to the CUSTOMER has been agreed in an individual case, the latter shall bear the risk and costs of shipment, in particular the costs of shipping and packaging for that purpose and the costs of availing of the working time of BIZERBA employees, which shall be paid appropriately. In the absence of a specific agreement the manner and route of shipping will be selected by BIZERBA. The costs of agreed diverging wishes of the CUSTOMER shall be borne by the latter. The risk shall pass to the CUSTOMER upon notification of readiness for shipment and/or at the latest when the PRODUCTS leave the BIZERBA works / the relevant BIZERBA production site.
- 7.4 If the CUSTOMER does not accept delivery the PRODUCTS promptly after notification of readiness for shipment, if possible BIZERBA shall store them for the CUSTOMER at the latter's risk and expense. Storage shall not release the CUSTOMER from its payment obligation.
- 7.5 Part deliveries acceptable to the CUSTOMER are permitted.
- 7.6 The CUSTOMER bears the risk of shipment for deliveries to foreign countries. The CUSTOMER is responsible for taking any necessary customs clearance measures, and for compliance with existing official import regulations in the country of destination.
- 8 Packaging**
- 8.1 Packaging shall be charged unless otherwise agreed. Packaging costs for returns shall not be reimbursed. Insofar as permitted by law, the CUSTOMER shall reach agreement with BIZERBA on disposal of the packaging.
- 8.2 Insofar as BIZERBA is under a statutory obligation to dispose of packaging materials, it shall do so at the CUSTOMER's request.
- 9 Reservation of Title**
- 9.1 BIZERBA reserves title to the PRODUCTS delivered, until full payment of the purchase price. In business-to-business dealings the reservation of title also applies until all claims arising from the ongoing business relationship between the CUSTOMER and BIZERBA have been satisfied.
- 9.2 The reservation of title also applies where individual claims were included in ongoing invoices and the balance has been established and recognized.
- 9.3 The CUSTOMER shall process or mix PRODUCTS on behalf of BIZERBA without this resulting in liabilities for BIZERBA. In the event of processing or mixing with other items not belonging to BIZERBA, in order to secure the claims of BIZERBA, the CUSTOMER now transfers to BIZERBA co-ownership of the new item in proportion to the value of the PRODUCTS vis-à-vis the other items processed. The CUSTOMER shall store the new item for BIZERBA free of charge.
- 9.4 The CUSTOMER shall dispose of the PRODUCTS delivered under reservation of title within the course of regular business provided it complies with its obligations under business relations with BIZERBA in good time.
- 9.5 Claims arising from the sale of PRODUCTS to which BIZERBA retains title or from another legal ground (insurance, damages etc.) are assigned now by the CUSTOMER to BIZERBA in order to furnish security, according to the extent of BIZERBA's ownership share in the PRODUCTS sold. BIZERBA now declares its acceptance of such assignment.
- If the CUSTOMER combines or mixes the PRODUCTS against payment with an item owned by a third party, it now assigns its claims for remuneration against that third party to BIZERBA for security purposes, up to the amount of the invoice value of the PRODUCT. BIZERBA now declares its acceptance of such assignment.
- 9.6 Upon request, the CUSTOMER shall provide all necessary information to BIZERBA about the inventory of the PRODUCTS owned by BIZERBA and about claims assigned to BIZERBA, and shall inform its customers about such assignment.
- 9.7 The CUSTOMER shall safely store the PRODUCTS delivered under reservation of title at its own expense, and shall insure them against all reasonable risks, especially against loss and damage. It hereby assigns its claims under the insurance contracts to BIZERBA in advance. BIZERBA hereby and now accepts such assignment.
- 9.8 If the value of the collateral furnished to BIZERBA by the CUSTOMER exceeds BIZERBA's claims by more than 10%, BIZERBA shall release such claims to that extent.
- 9.9 The CUSTOMER's right to dispose of the PRODUCTS that are subject to BIZERBA's reservation of title and to collect claims assigned to BIZERBA shall expire as soon as the CUSTOMER is more than 14 days in arrears on payments that are due, as soon as it discontinues payments generally and/or faces financial collapse. The CUSTOMER's above-mentioned right shall also expire where claims fall due immediately in accordance with Clause 4.6. If the above prerequisites are met, BIZERBA shall be entitled to require the immediate surrender of all PRODUCTS under reservation of title and/or the assignment of the CUSTOMER's claims for surrender against third parties that relate to the PRODUCTS under reservation of title. This applies to the exclusion of any right of retention whatsoever on the part of the CUSTOMER unless such right is based on the same contractual relationship. No grace period has to be granted and withdrawal from the agreement is not necessary in order to require immediate surrender or for the above-mentioned assignment of claims for surrender. The above-mentioned requirement of surrender and/or the assignment do not constitute withdrawal from the Agreement.
- 9.10 The CUSTOMER shall prevent access being gained by third parties to the PRODUCTS under reservation of title and to the assigned claims. Imminent and executed access by third parties shall be reported to BIZERBA by the CUSTOMER without undue delay. Costs incurred by BIZERBA due to intervention shall be borne by the CUSTOMER.

- 9.11 Insofar as the reservation of title is invalid under the law of the country in which the PRODUCTS delivered are located, the CUSTOMER shall furnish equivalent collateral upon request. If the CUSTOMER fails to comply with this requirement promptly, then irrespective of agreed payment targets BIZERBA may require immediate cash payment of all outstanding invoices and may realize existing collateral.
- 10 Duty to Examine and Duty to File Complaints**
- 10.1 The CUSTOMER shall examine the goods promptly and shall file written notification of defects promptly to BIZERBA, no later than 14 days after delivery. A complaint made to commercial agents or sales representatives is not sufficient.
- 10.2 Hidden defects shall be notified promptly, no later than 14 working days after they are discovered.
- 10.3 Dispatch of timely written notification of defects, precisely identifying the defects complained of, is sufficient for compliance with the deadline for filing complaints.
- 10.4 The products are deemed approved in case of failure to file complaints or notifications of defects, or failure to do so in due time.
- 11 Condition of PRODUCTS Owed and Warranty**
- 11.1 The condition of the PRODUCTS owed shall be determined exclusively by the qualities expressly agreed with BIZERBA. Objectives of the CUSTOMER and pre-contractual DOCUMENTS not expressly agreed in writing as owed qualities do not define the owed qualities of the PRODUCTS.
- 11.2 If there are defects in the PRODUCT at the time the risk passes, the CUSTOMER is entitled to the rectification of defects or to repairs, or to delivery of a replacement. BIZERBA may choose between the rectification of defects or repairs, or delivery of a replacement.
- 11.3 BIZERBA is entitled to refuse to rectify defects, perform repairs or deliver a replacement if this would entail disproportionate effort. The CUSTOMER then has the rights set out in Clause 11.4 below. One may assume disproportionate effort for the type of rectification, repair or replacement selected especially where the costs of such performance exceed the value of the PRODUCT at the time the risk passed by at least 20%.
- 11.4 If BIZERBA is unable to rectify the defect within a reasonable period of time, the CUSTOMER may at its discretion reduce the purchase price, withdraw from the contract or demand damages. The provisions in Clause 12 below apply accordingly. The right to withdraw from the contract and to demand damages is excluded where insignificant defects are concerned.
- 11.5 The warranty period in legal transactions between businesses is 12 months. As a rule the period commences as soon as notification of readiness is provided for the goods ordered, where shipment is agreed as soon as notification of readiness for shipment is provided. The set period definitely commences as soon as the invoice is issued. In case of the subsequent rectification of defects or repairs or the delivery of spare parts within that context, the set period for repairs shall not commence anew. The warranty period does not apply to claims for damages based on liability for defects caused by grossly negligent or intentional breaches of duty by BIZERBA or its vicarious agents, or in case of injury to life, limb or health. Clause 12 applies to other claims for damages.
- 11.6 No warranty claims for defects arise, in particular, if and insofar as damage to the PRODUCT or to other legal interests of the CUSTOMER was caused by the following grounds:
- incorrect information about the purpose, place or terms of deployment of the PRODUCT and/or a location diverging from the agreed place of deployment,
 - incorrect further processing, assembly or treatment,
 - normal customary or excessive wear-and-tear that was not caused by defects in production or materials,
 - excessive use and inappropriate handling of the PRODUCT,
 - incorrect installation of the PRODUCT by the CUSTOMER or third parties, unless such incorrect installation was based on instructions issued by BIZERBA,
 - failure to observe the instructions for putting into operation and operation of the PRODUCT mentioned in the operating instructions or issued by BIZERBA, or
 - interference by persons not authorized by BIZERBA or use of non-Bizerba-original spare parts, especially failure to use Bizerba thermal ticket rolls and labels or operating resources produced according to Bizerba specifications and approved by BIZERBA.
- 11.7 Of the costs arising directly from the rectification of defects, repairs or delivery of a replacement, BIZERBA shall bear the costs directly necessary in order to rectify defects or provide repairs, especially the costs of spare parts including shipment costs, provided the complaint proves to be justified. Mounting and dismantling solely insofar as it constitutes part of the original obligations of BIZERBA. Apart from this the CUSTOMER shall bear the costs. Insofar as expenses increase because the PRODUCT is moved by the CUSTOMER or by a third party to a location outside the place of deployment according to Clause 3.2, the CUSTOMER shall bear the resulting additional costs in connection with the rectification of defects. This includes, in particular, travel and overnight expenses incurred as well as adequate remuneration for necessary time spent travelling by BIZERBA employees.
- 11.8 Should the PRODUCTS be resold by the CUSTOMER or a third party to a consumer who is entitled to make warranty claims for defects that already existed at the time the risk passed between BIZERBA and the CUSTOMER, the statutory provisions shall apply to recourse to the entrepreneur subject to the condition that compensation by BIZERBA is limited to 120% of the invoice amount for the relevant items.
- 11.9 Performance according to Clauses 11 and/or 12 shall be provided in all cases without acknowledging a legal obligation.
- 12. Other Claims for Damages**
- In case of a merely negligent breach of material contractual obligations by BIZERBA or its vicarious agents, provided there is no intentional or grossly negligent breach, BIZERBA's liability is limited to the foreseeable damage typical of that kind of contract. Material contractual obligations in the first place permit due and proper performance of the contract, the CUSTOMER uses to rely on compliance therewith so that breaches of material contractual obligations usually threaten the achievement of the contract. Restriction does not apply in case of injury to life, limb or health. Nor does the exclusion of liability apply in cases where liability for defects in the item delivered arises under the German Product Liability Act (*Produkthaftungsgesetz*) for personal injury or property damage to privately used objects. This scope of liability also applies to any claims for indemnification that are expressly assumed by BIZERBA. In this respect, in particular, the plea of contributory negligence or contributory cause on the part of the CUSTOMER or third parties is not waived.
- 13. Indemnification Where PRODUCTS Are Used Outside the Place of Deployment (Clause 3.2)**
- The CUSTOMER indemnifies BIZERBA against any liability whatsoever for claims made by third parties on the basis of statutory provisions of the country in which the PRODUCT is used in divergence of Clause 3.2 and which provisions go beyond the liability regulated in Clauses 11 and 12 hereof.
- 14. Test Devices/Demo Devices**
- The terms of the BIZERBA lending agreement apply to the provision of PRODUCTS for test or demo purposes.
- 15. Software**
- Insofar as the delivery includes software, the BIZERBA licensing terms shall also apply.
- 17. Installation**
- If the order includes installation services to be provided by BIZERBA, the installation terms of BIZERBA shall also apply.
- 18. Data Processing for Own Purposes**
- The CUSTOMER agrees that BIZERBA may obtain, process and use its contact data for the purpose of performing the contractual relationship and in order to maintain business relations with the CUSTOMER. Contact data means business-related contact information made available to BIZERBA by the CUSTOMER, in particular the name, professional title, business address, business telephone and fax numbers as well as the e-mail address of employees of the CUSTOMER or of third parties.
- 19. Data Processing Commissioned by the CUSTOMER**
- 19.1. Insofar as BIZERBA or a third party it commissions obtains temporary access (e.g. while conducting systems tests) to data and/or storage media of the CUSTOMER, the latter shall ensure that access to its personal data is prevented or at least kept minimal.
- 19.2. Where such access cannot be prevented and in all other cases in which BIZERBA or a third party it commissions processes personal data by order of the CUSTOMER, the parties shall enter into an agreement on commissioned data-processing of the CUSTOMER's data in accordance with Sec. 11, German Federal Data Protection Act (BDSG), based on the template made available to the CUSTOMER by BIZERBA on request.
- 20. Venue, Place of Performance, Choice of Law**
- 20.1 Place of performance and place of jurisdiction is Balingen, Germany.
- 20.2. The contractual relations between BIZERBA and the CUSTOMER are governed exclusively by the law of the Federal Republic of Germany to the exclusion of the UN Sales Convention (CISG).
- 21. Safeguard Clause**
- Should provisions of these Terms be or become invalid or unenforceable in whole or in part, or in case of a gap in these Terms, this shall not affect the validity of the remaining provisions hereof. Instead of the invalid or unenforceable provision, the parties shall agree on a provision that comes closest to the economic intent of the invalid provision. This also applies where the invalidity concerns a deadline or a period of time. In that case the parties shall agree on a lawful deadline or a lawful period of time. In case of a gap, a provision corresponding to what would have been agreed, had the parties considered the matter from the outset, shall be deemed agreed.