



# GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND SERVICE NATIONAL

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### 1. **Scope of Application**

Any sales, deliveries and other services of BITZER SE, BITZER Kühlmaschinenbau GmbH, BITZER Kühlmaschinenbau Schkeuditz GmbH, KIMO RHVAC Controls GmbH and Armaturenwerk Altenburg GmbH (hereinafter individually referred to as "BITZER") are exclusively based on these General Terms and Conditions of Sale, Delivery and Service – National (hereinafter referred to as "General Terms and Conditions of Sale – National" or "GTCS-N"), which the Ordering Party acknowledges and accepts by placing the order or by accepting the delivery or service (the Ordering Party and BITZER are hereinafter also referred to as 'Party' and collectively as "Parties"). These GTCS-N are an integral part of all contracts that BITZER concludes with the Ordering Party with respect to deliveries of goods and/or the provision of services offered by BITZER (hereinafter referred to collectively as "Deliveries"). These GTCS-N shall also apply to any future business transactions with the Ordering Party, even if they are not explicitly agreed upon again. The application of any deviating or additional terms and conditions of the Ordering Party or any third party is excluded even if BITZER does not explicitly reject them. Even if BITZER refers to a letter containing terms and conditions of the Ordering Party or a third party or any reference thereto, this shall not be construed as an acknowledgement of the applicability of such terms and conditions.



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## 2. Conclusion of Contract

- 2.1. Product and service presentations of BITZER, including those at trade fairs, including virtual ones, in catalogues, including electronic ones, in price lists, on BITZER websites, in the myBITZERshop, on other e-commerce offerings of BITZER or elsewhere on the Internet shall not constitute a binding offer to enter into an agreement. They shall only be regarded as a non-binding invitation to make an offer to order services. In response to such invitation, the Ordering Party may submit a binding offer to enter into a contract (section 145 of the German Civil Code [Buergerliches Gesetzbuch – “BGB”]). Notices of receipt sent by BITZER, for example using emails generated automatically, only acknowledge the receipt of such offer and shall not be regarded as acknowledgement or acceptance of such offer.
- 2.2. If an order of the Ordering Party can be regarded as a binding offer pursuant to section 145 BGB, BITZER may accept such offer within two weeks after receipt.
- 2.3. The offers submitted by BITZER are non-binding and subject to change.
- 2.4. The Ordering Party undertakes to notify BITZER of all relevant specifications, properties, features and performance characteristics of the delivery item, its application and the planned site/deployment location prior to conclusion of the contract. In this regard, the Ordering Party is responsible for ensuring that the delivery items exhibit the Ordering Party’s desired specifications and that they satisfy the requirements of the system (as a whole) into which the delivery items may be incorporated. If the Ordering Party fails to meet this obligation, delivery items will be delivered that are designed for customary use.

BITZER reserves the right to make any necessary changes and improvements but is under no obligation to do so.

- 2.5. A contract shall be concluded only when BITZER expressly confirms the offer in writing, by telefax, by email or in other electronic form and shall be based exclusively on the contents of the order confirmation and these GTCS-N. Any oral agreements or commitments must be confirmed by BITZER in writing in order to become effective.

If the service in question is a repair, the Ordering Party undertakes to provide BITZER with a detailed history of the object being repaired and a description of the defect in text form.

- 2.6. The legal relationship between BITZER and the Ordering Party shall be governed solely by the express order confirmation and these GTCS-N. These reflect the entire agreement between the Parties with respect to the subject matter of the contract. Unless otherwise expressly agreed upon by the Parties, services shall mean the provision of services, in accordance with the statutory provisions on service contracts (section 611 et seq. BGB), only.

BITZER is entitled to perform the Deliveries itself or through third parties.

Any oral commitments made by BITZER before the conclusion of the contract shall not be legally binding. Any oral agreements between the Parties shall be substituted by the written



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contract, unless it is explicitly confirmed therein that they shall continue to be effective and legally binding. Any amendments or modifications to agreements entered into, including the order confirmation and these GTCS-N, must be made in writing in order to be effective. Except for managing directors and persons having full power of attorney, the employees of BITZER shall not be authorised to enter into any deviating oral agreements. The requirement of written form shall also be deemed as fulfilled by sending a telefax or an email; whilst in the event of transmission by email, the statement contained therein shall only be valid if the sender adds their name and signs the electronic document with a qualified electronic signature according to the German Trust Services Act (Vertrauensdienstegesetz – VVDG). In respect of a contract, each Party must sign an identical document with a qualified electronic signature.

- 2.7. Any details provided by BITZER regarding the Deliveries offered (e.g. weight, dimensions, utility values, capacity, tolerances and technical data) as well as the presentation thereof (e.g. drawings and illustrations) shall have only approximate validity unless an exact correspondence of data and values is required for the usability of the Deliveries for the contractually agreed purpose, if any. They neither represent any guaranteed qualities nor characteristics but are only descriptions of the Deliveries. Deviations that are customary in trade or that are due to legal provisions or deviations that represent technical improvements as well as the replacement of components by equivalent parts shall be admissible as far as the use for the contractually agreed purpose is not impaired thereby.
- 2.8. BITZER reserves all rights, especially rights of title and copyrights, relating to offer and sale documents (particularly calculations, illustrations, drawings and details of weights and dimensions) and samples. These may only be disclosed to third parties with the prior written permission of BITZER and must be returned to BITZER immediately upon request.
- 2.9. The performance of the contract on the part of BITZER is subject to the proviso that there are no national or international provisions of foreign trade law and no embargoes (and/or any other sanctions) opposing such performance.
- 2.10. In connection with Deliveries from BITZER, the Ordering Party agrees to refrain from the following business transactions in all circumstances:
  - 2.10.1. business transactions with persons, organisations or institutions which are included in a sanction list pursuant to EU regulations or US export rules;
  - 2.10.2. business transactions with embargoed countries;
  - 2.10.3. business transactions for which the required approvals have not been granted;
  - 2.10.4. business transactions which could be made in connection with NBC weapons or for a military end use.
- 2.11. Any serious contravention or repeated contraventions against these GTCS-N shall be a reason for an immediate termination or another form of cancellation of the contractual relationship.



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## 3. Delivery Type, Delivery Dates and Deadlines

- 3.1. The place of performance for the Deliveries is the registered office of BITZER unless the Parties have expressly agreed upon a different place of performance.
- 3.2. Dates and deadlines for the Deliveries shall only be binding if BITZER has confirmed them in writing and if the Ordering Party has made available to BITZER in good time any and all information, documents, associated services and supplies necessary for execution of the Deliveries, has issued any and all necessary approvals and has made any contractually agreed down payments. The defence of non-performance of contract is reserved. The agreed deadlines shall start with the date of the order confirmation. In the event of any subsequent additional orders or an extension of the order, the deadlines shall be extended accordingly. If shipment has been agreed, the delivery deadlines shall refer to the date when the Deliveries are handed over to the forwarding company, carrier or any other party charged with transportation. BITZER, without prejudice to its rights arising from a default of the Ordering Party, may request an extension or postponement of the delivery deadlines by the period of time during which the Ordering Party fails to comply with its contractual obligations vis-à-vis BITZER.
- 3.3. Any unforeseen and unavoidable events beyond BITZER's scope of influence and for which BITZER cannot be made responsible, such as force majeure, war, natural disasters, directives issued by public authorities, operational disorders of any kind, difficulties with the procurement of material and energy, delays in transportation, lack of labour, energy or raw materials, incorrect or delayed deliveries from suppliers, labour disputes and/or legal lockouts shall release BITZER from its obligation to provide timely delivery or services for the duration of the event concerned. Agreed deadlines shall be extended for as long as the event lasts; the Ordering Party shall be informed appropriately about the occurrence of the event. If the end of the disturbance is not foreseeable or if the event lasts for more than three months, each Party shall be entitled to withdraw from the contract.
- 3.4. If the Deliveries from BITZER are delayed, the Ordering Party shall be entitled to cancellation only if BITZER is responsible for the delay and if an adequate period of time set by the Ordering Party for the fulfilment of the delivery has lapsed without success.
- 3.5. If the Ordering Party is in default with the acceptance of the Deliveries or if it culpably violates any other obligations to cooperate, BITZER, subject to the provisions of section 4.3, shall be entitled to store the delivery appropriately at the risk and costs of the Ordering Party and to claim further additional expenditures from the Ordering Party. Further claims remain reserved. If previously mentioned conditions apply, the risk of accidental loss or accidental deterioration of the Deliveries shall pass to the Ordering Party at the time the Ordering Party is in default of acceptance. Without prejudice to its other rights, BITZER shall be entitled to cancellation if a reasonable grace period granted to the Ordering Party for the acceptance of the Deliveries has lapsed without success.
- 3.6. BITZER shall be entitled to provide partial deliveries if the partial delivery can be used by the Ordering Party in the framework of the contractually agreed purpose, the delivery of the



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remaining goods is safeguarded, and no significant additional work or expenses arise for the Ordering Party as a result of the partial deliveries. BITZER may remedy the objection of additional costs by bearing such costs.

## 4. Shipping, Transfer of Risk, Insurance

- 4.1. As far as the Ordering Party has given no directives, it shall be within the reasonable discretion of BITZER to dispatch the agreed delivery items by adequate means of transportation and in standard packaging.
- 4.2. The risk shall pass to the Ordering Party at the latest when the delivery is handed over to the transportation or forwarding company, the carrier or any other third party responsible for executing the transportation or to the Ordering Party itself, with the start of the loading process being definitive in this regard. This shall apply even when partial deliveries are made or when BITZER has agreed to carry out additional services (e.g. shipping or installation). When the handing over or shipping of the delivery is delayed due to reasons for which the Ordering Party is responsible, the risk shall pass to the Ordering Party on the day when a ready-for-dispatch note regarding the delivery has been issued.
- 4.3. The costs for storing after the risk has passed to the Ordering Party shall be borne by the Ordering Party. In the event of storage by BITZER, the storage costs shall be 0.25% (zero point twenty five percent) of the invoice amount for the Deliveries to be stored per each elapsed week.
- 4.4. BITZER shall insure the delivery against theft, breakage, fire and water damage or any other insurable risks only upon the explicit request of the Ordering Party and at the latter's costs.

## 5. Prices, Terms of Payment

- 5.1. If the Ordering Party and BITZER have not agreed upon a specific price for the Deliveries, the price is based on the valid price list of BITZER at the time of conclusion of the contract or, if such price cannot be taken or derived from the price list, the tariff remuneration is deemed to be agreed if a tariff exists and, if no tariff exists, the usual remuneration is deemed to be agreed (cf. section 612 BGB).
- 5.2. In respect of deliveries, all BITZER prices are ex works, including the costs for standard packaging and excluding any costs for special packaging, customs duties, travel/visa/accommodation costs and other travel-related expenses. Any additional and special services, including overtime, night work and work at weekends/on public holidays, will be invoiced separately. Travelling time will be charged as working time.
- 5.3. In the event of Deliveries whose net order value (price excluding forwarding expenses, VAT, customs, etc.) is below € 100.00, BITZER is entitled to a small order handling fee of € 58.00.



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- 5.4. In the event of Deliveries whose net order value is at least € 100.00 being divided, at the request of the Ordering Party, into separate partial deliveries, BITZER is, due to extra processing expenses, entitled to a handling fee of € 58.00 for each separate partial delivery with a net order value of below € 100.00.
- 5.5. The full amount of all invoices or any equivalent payment schedules shall be due for payment immediately after receipt. A prompt payment discount may only be deducted upon respective written agreement between the Ordering Party and BITZER. In the event of non-payment, the Ordering Party shall, however, be in default 30 (thirty) days after the due date and receipt of the invoice or equivalent payment schedule at the latest without any further notice or reminder from BITZER being required if the calendar date for payment is not defined or definable in/from an individual contract or on the invoice or equivalent payment schedule.
- 5.6. In the event of default in payment, BITZER shall be entitled to charge the applicable statutory default interest rate, which is currently 9 (nine) percentage points per annum above the applicable base interest rate of the European Central Bank, and a lump sum fee of € 40.00. The right to claim any further damage due to delay shall remain unaffected.
- 5.7. Drafts, bills of exchange and cheques shall only be accepted as payment if this has been agreed separately and without any costs or fees for BITZER; they shall be considered as payment only after they have been honoured or cashed.
- 5.8. The Ordering Party shall only be entitled to offset any amounts if the claims on both sides are due and if the counterclaim of the Ordering Party is undisputed and has been established in court as final and conclusive.
- 5.9. The Ordering Party shall be entitled to withhold any payments only if its counterclaim is based on the same contract and is undisputed or has been established in court as final and conclusive.
- 5.10. If, after the conclusion of the contract, BITZER recognises that there is a risk that the Ordering Party might not be able to perform, BITZER shall be entitled to provide any outstanding Products and Services only against advance payment or security. If the advance payments or the securities have not been provided even after an adequate grace period granted for performance has elapsed, BITZER shall be entitled to withdraw, entirely or partially, from individual or all contracts concerned. The right of BITZER to assert further claims remains unaffected.

### **6. Agreement on Quality without Guarantee**

- 6.1. BITZER shall warrant that the Deliveries have the agreed quality at the moment of the transfer of risk; this quality shall be based exclusively on the concrete agreements concluded in writing between the Ordering Party and BITZER with respect to the properties, features and characteristics of the Deliveries.



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- 6.2. It is not the intention of BITZER, and the contract between the Ordering Party and BITZER is not designed in such a way, that BITZER assumes any additional commitment (guarantee) regarding the quality of the Deliveries beyond the agreement on quality as defined in section 6.1.
- 6.3. Pursuant to section 6.2, any data contained in catalogues, price lists (including in electronic form) and any other information material provided to the Ordering Party by BITZER shall in no way be deemed to represent any kind of guarantee for particular properties of the delivery item or the suitability of the delivery item for a particular purpose.

### **7. Warranty, Obligation to Inspect**

- 7.1. In accordance with the provisions set forth below in this section 7, BITZER shall provide warranty for any defects of the Deliveries. Warranty shall not apply if the Ordering Party modifies the Deliveries or has it modified by a third party without the consent of BITZER, thereby making the remedy of defects impossible or complicating it in an unacceptable way. Whatever the circumstances, the Ordering Party shall bear the additional costs for the remedy of defects resulting from the modification.
- 7.2. The Ordering Party may claim warranty rights only if it has inspected the Deliveries and reported any defects in writing to BITZER without delay, but no later than two weeks after handover. Any hidden defects must be reported to BITZER in writing as soon as they have been detected. In the event of any damage to the packaging, e.g. to the cardboard box or protective film, the Ordering Party must note this defect on the transport paperwork of the transport company, forwarder, carrier or other third party responsible for executing transportation.
- 7.3. In the event of any notice of defects, BITZER shall be entitled to inspect and examine the Deliveries which are the subject of the complaint. The Ordering Party shall grant to BITZER the necessary period of time and opportunity for this purpose. BITZER shall also be entitled to request that the Ordering Party return the Deliveries subject to complaint to BITZER at the Ordering Party's costs. The return must be within two weeks of notice of defect. If a notice of defect by the Ordering Party turns out to be unjustified, the Ordering Party shall be obligated to reimburse all expenses incurred by BITZER in this regard, e.g. inspection costs, wages, travel expenses, installation costs and shipping costs.
- 7.4. Defects for which BITZER has to provide warranty shall be remedied by BITZER, at its own discretion, either by repairing the defect without any costs for the Ordering Party or by providing a part free from defects or by replacing the entire delivery item (supplementary performance).
- 7.5. The Ordering Party shall grant to BITZER the necessary period of time and opportunity for the repair or the replacement delivery. Only in urgent cases where operational safety is at risk or to prevent disproportionately high damage or where BITZER is in default with remedying the defect shall the Ordering Party be entitled to remedy the defect itself or have it remedied by a third party once BITZER has been informed without delay and to request the reimbursement



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of all necessary costs from BITZER, unless the Ordering Party is responsible for bearing the costs in accordance with the final sentence of section 7.3.

- 7.6. If BITZER replaces parts in the context of supplementary performance pursuant to section 7.4, any replaced parts must be returned. BITZER shall be entitled to take back any defective delivery items against reimbursement even outside the warranty period.
- 7.7. BITZER shall not assume any warranty for damage caused by inadequate or inappropriate use, unsuitable operating materials (in particular oils not approved by BITZER), incorrect assembly, incorrect commissioning or incorrect installation by the Ordering Party or due to natural wear and tear insofar as BITZER is not responsible for the damage.
- 7.8. The expenses for material, shipment, transport, handling and labour required for the purpose of supplementary performance shall be borne by BITZER except for the additional costs arising due to the fact that the delivery item is at a place other than the place of delivery or place of intended use. Provided that the supply of the delivery item to the Ordering Party is subject to the statutory provisions for purchase contracts according to section 433 et seq. BGB and to the extent the disassembly of the defective delivery item and the assembly of the repaired or replaced delivery item are required for the purpose of supplementary performance, BITZER is entitled, at its choice, to either carry out the disassembly and assembly itself or to leave this to the Ordering Party. In the latter case, the Ordering Party shall, first of all, submit to BITZER for review an offer for the disassembly and assembly carried out by itself or a third party; the Ordering Party is obliged to keep the costs as low as possible and, if possible, to use its own manpower at its own expense. If the disassembly and assembly are carried out by the Ordering Party, BITZER shall only reimburse the proven and required costs. BITZER is not obliged to carry out the disassembly and assembly and/or to bear the respective costs if and to the extent that the costs incurred in this respect bear no proportion to the seriousness of the defect and the purchase price of the delivery item. This must regularly be assumed if the costs for the disassembly and assembly amount to more than 30% (thirty percent) of the delivery item's purchase price. The Ordering Party is obliged to provide BITZER with all information required for the disassembly and assembly and to enable BITZER to inspect and review the rejected delivery item on site.
- 7.9. If BITZER refuses seriously and conclusively to fulfil the contract, if there are special circumstances which, carefully considering the mutual interests, justify the immediate assertion of other rights than those stated in section 7.4, if the remedy of defects or the replacement delivery fails, if it is unacceptable for the Ordering Party or is refused by BITZER in accordance with section 439 (4) BGB because the costs therefore would be disproportionately high, the Ordering Party, at its discretion and in accordance with statutory provisions, may withdraw from the contract, reduce the purchase price or request damages in lieu of performance (or, as the case may be, reimbursement of its expenses).
- 7.10. The period of limitation for any warranty claims starts on the date of delivery at the Ordering Party's premises or, if acceptance is required, with acceptance.



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- 7.11. Regarding new delivery items, the period of limitation for a warranty claim shall be one year. This period shall not apply (i) to the Ordering Party's rights in case of defects concealed in bad faith or caused intentionally, (ii) if and to the extent that BITZER has assumed a guarantee, (iii) to damage claims of the Ordering Party due to culpable damage to life, body or health, (iv) to damage claims of the Ordering Party due to any damage caused by BITZER intentionally or by gross negligence, (v) to damage claims of the Ordering Party due to other reasons than defects of the delivery items, as well as (vi) to claims under the German Product Liability Act or in case of other mandatory statutory liability provisions. If the Ordering Party or a subsequent customer in the supply chain sells the delivery item to a consumer within the meaning of section 13 BGB, the provisions of section 445b BGB on a longer limitation period shall remain unaffected in case of any rights of recourse.
- 7.12. With regard to certain new delivery items, the period of limitation for a warranty claim may amount up to a total of five years. In such instance, the period of limitation for the warranty claim (section 7.11) shall be extended (hereinafter referred to as 'the warranty extension'); depending on the order and delivery item, the length of the warranty extension may vary between one full year and a maximum of four full years. A distinction has to be made between warranty extension free of charge and warranty extension with costs. The latter can only be ordered when the respective delivery item is ordered.
- Uniform preconditions for the extension of the warranty period for all kinds of warranty extensions are
- 7.12.1. that the delivery item is registered at <https://www.bitzer.de/webservices/activate.aspx> or by scanning the QR code on the name plate of the delivery item using the BITZER BEST APP or BITZER B-SPOT APP, the digital platforms of BITZER for the registration of delivery items, no later than six months after its delivery to the Ordering Party and prior to initial commissioning;
  - 7.12.2. that a fully completed data protocol is transferred to BITZER prior to commissioning and in accordance with the guidelines found at <https://www.bitzer.de/de/de/service/services/warranty-extension/>;
  - 7.12.3. a fully completed data protocol, showing the operating parameters of the delivery item, is transferred annually from the third year of the warranty period onwards.
- 7.13. BITZER grants a free-of-charge extension of the warranty period by one year for delivery items from its product line 'BITZER IQ INTELLIGENT COMPRESSORS' (hereinafter referred to as 'IQ products') and for delivery items which are equipped with an optional 'BITZER IQ MODULE' (hereinafter referred to as an 'IQ module'). BITZER furthermore offers a warranty extension with costs – for a maximum period of three further years – for IQ products and delivery items equipped with an IQ module.

Contrary to the preconditions stated within section 7.12, the fully completed data protocol to be provided to BITZER has to be the data protocol generated by the IQ product or the IQ module respectively, known as the 'Best Data Log'. As a further precondition of a warranty extension,



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the application limit monitoring of the IQ product or the IQ module, respectively, has to be activated from first commissioning until the end of the warranty period. The warranty extension is applicable for the IQ product, the IQ module and the accompanying compressor, insofar as this compressor is already fitted with the IQ module at the time of initial commissioning.

- 7.14. Data protocols transmitted to BITZER are only processed in the case of a warranty claim.
- 7.15. If the law provides for longer statutory periods of limitation pursuant to section 438 (1), item 2 BGB (governing buildings and construction-related objects), section 445b BGB (governing claims under a right of recourse) and section 634a (1) BGB (governing defects of construction works), such periods shall apply.
- 7.16. If BITZER remedies the defect in the context of supplementary performance (cf. section 7.4), the period of limitation for warranty claims shall be suspended for the time the remedy of the defect takes and shall be extended accordingly. If a new delivery item is delivered as a replacement, a new period of limitation of one year for warranty claims shall start, unless the replaced delivery item is subject to a warranty extension. In this case, such a warranty extension shall also apply to the new delivery item delivered as a replacement, but the overall period of limitation shall not exceed five years from the commencement of the primary warranty period.

## 8. Damages and Limitation of Liability

8.1. The liability for damages of BITZER, irrespective of the legal cause, in particular for impossibility, default, defective or incorrect performance, breach of contract, violation of obligations during the contract negotiations or tortious act, as far as a fault of BITZER must be present in all these cases, shall be limited in accordance with this section 8.

8.2. BITZER shall not be liable

8.2.1. in the event of ordinary negligence of its management bodies, legal representatives, employees or any other authorised agents,

8.2.2. in the event of gross negligence of its non-executive employees or any other authorised agents,

insofar as the violation is not a violation of any essential contractual obligations. Essential contractual obligations are the obligation to provide Products and Services in due time and free from any defects as well as any obligations of advice, protection and custody which are to permit the Ordering Party the use of the product or service according to the contract or which aim to protect the health and life of the Ordering Party's employees or of any third party or to protect the Ordering Party's property against significant damage.

8.3. As far as BITZER is to be held liable for damages on the merits according to section 8.2, its liability shall be limited to the damage which could be foreseen by BITZER at the time of



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conclusion of the contract as a possible consequence of a breach of the contract or which BITZER, applying due diligence, should have foreseen considering the circumstances which were known to BITZER or which BITZER should have known. Furthermore, any indirect or consequential damage resulting from a defect of the Products and Services shall be compensated only as far as such damage may be typically expected in connection with the appropriate use of the Products or Services.

- 8.4. Sections 8.1 to 8.3 shall apply to all claims for damages, irrespective of their legal cause, in particular also to liability for tortious act.
- 8.5. The above exclusions and limitations of liability shall apply to the same extent in favour of the management bodies, legal representatives, employees and any other authorised agents of BITZER.
- 8.6. As far as BITZER provides technical information or consultation services and this information or these consultation services do not belong to the due range of services contractually agreed, this shall be done free of charge and under the exclusion of any liability.
- 8.7. Insofar as BITZER provides technical information or recommendations in connection with the Products and Services or provides consultation services, there shall be no entitlement to compensation for losses incurred from following such advice or recommendations. Otherwise, the aforementioned liability exclusions and limitations shall apply accordingly.
- 8.8. Liability for the loss of data or information is excluded. The Ordering Party is itself responsible for backing up data.
- 8.9. The limitations of liability stated in this section 8 shall not apply to liability on the part of BITZER for deliberate action, guaranteed properties, damage to life, limb and health or to liability under the German Product Liability Act.
- 8.10. The Ordering Party shall be obligated to take appropriate measures to prevent and -minimise damage.

### **9. Retention of Title**

- 9.1. The Deliveries shall remain the property of BITZER until any and all payments due to BITZER under the business relationship with the Ordering Party have been settled in full.
- 9.2. In the event of current accounts, the retained property shall serve as a security for the balance claims due to BITZER.
- 9.3. The Ordering Party may only sell Deliveries subject to retention of title by BITZER in the course of their ordinary business operations. The Ordering Party shall not be authorised to pledge the Deliveries under retention of title, to transfer them by way of security or to make any other dispositions endangering the property of BITZER. The Ordering Party already assigns the



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claims from the resale to BITZER; BITZER already accepts this assignment. If the Ordering Party sells the Deliveries under retention of title after processing or transformation or after combination with other things or together with other things, the assignment of claims shall be deemed to have been agreed only in the amount of the part which corresponds to the price agreed between BITZER and the Ordering Party plus a safety margin of 10% (ten percent) of this price. The Ordering Party shall be revocably entitled to collect the claims assigned to BITZER in its own name on behalf of BITZER. BITZER may revoke this authorisation as well as the right to resell the Deliveries if the Ordering Party is in default vis-à-vis BITZER with respect to essential contractual obligations such as payment of the price.

- 9.4. If the Deliveries under retention of title are combined with other things, BITZER shall acquire a co-ownership share in the new thing commensurate to the value of the Products and Services proportionate to the other things at the time of combination. If the combination is made in such a way that the object of the Ordering Party is to be considered as the major item, it shall be deemed to have been agreed that the Ordering Party shall assign a co-ownership share to BITZER according to proportion. The co-ownership share thus created shall be maintained for BITZER by the Ordering Party.
- 9.5. The Ordering Party shall provide BITZER, at any time, any and all information requested concerning the Deliveries under retention of title or the claims assigned to BITZER hereunder. Any access or claims to the Deliveries under retention of title by a third party shall be immediately reported to BITZER by the Ordering Party and all necessary documents shall be provided. At the same time, the Ordering Party shall inform the third party about BITZER's retention of title. The costs for defence against such access and such claims shall be borne by the Ordering Party.
- 9.6. During the period of the retention of title, the Ordering Party shall be obligated to treat the Deliveries under retention of title with care.
- 9.7. If the realisable value of the securities exceeds the total of the payments due to BITZER by more than 10% (ten percent), the Ordering Party shall be entitled to request a release to this extent.
- 9.8. If the Ordering Party is in default with essential contractual obligations, such as payment, vis-à-vis BITZER, the latter, without prejudice to any other rights, may take back the Deliveries under retention of title and use them otherwise in order to satisfy its claims for payment vis-à-vis the Ordering Party. In this case, the Ordering Party shall immediately grant to BITZER or the authorised representative of BITZER access to the Deliveries under retention of title and hand over these Deliveries. If BITZER requests that the Deliveries be handed over based on this provision, this shall not be considered as a withdrawal from the contract.
- 9.9. In the event of deliveries in countries with other legal systems where the retention of title specified above does not have the same securing effect as in the Federal Republic of Germany, the Ordering Party shall use its best efforts to grant similar rights of security to BITZER without delay. The Ordering Party shall cooperate in implementing all measures, such as registration and publication, which are necessary for and conducive to the validity and enforceability of



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such rights of security. At the request of BITZER, the Ordering Party shall be obligated to insure the Deliveries under retention of title in an adequate way, to provide corresponding evidence of the insurance to BITZER and to assign the claims from the insurance contract to BITZER.

### 10. Product Liability

If the Ordering Party sells the Deliveries without any changes or after processing, transformation or combination with other products, it shall indemnify BITZER from any claims asserted for reasons of product liability by a third party as far as the Ordering Party is responsible for the fault that gives rise to the liability claims.

### 11. Industrial Property Rights and Usage Rights

- 11.1. If the Ordering Party determines how BITZER is to manufacture the Deliveries by providing certain instructions, data, documents, drafts or drawings, the Ordering Party shall warrant that the rights of no third party, such as patents, registered utility models or any other industrial property rights or copyrights, will be violated by BITZER. Otherwise, BITZER pledges pursuant to this section 11 that its Deliveries are free of third-party rights. Both the Ordering Party and BITZER shall inform the other Party immediately in writing if any claims are asserted against it for violation of such rights.
- 11.2. In the event that the Deliveries violate a copyright or industrial property right of a third party, BITZER, at its own discretion and at its own expense, shall modify or replace the Deliveries in such a way that they no longer violate any third-party rights, but that they still meet the contractually agreed specifications, or BITZER shall procure the rights of use for the Ordering Party by concluding a licence agreement. If BITZER does not succeed in this regard within an appropriate period of time, the Ordering Party shall be entitled to reduce the price appropriately or withdraw from the contract. Any claims for damages of the Ordering Party shall be subject to section 8 of these GTCS-N.
- 11.3. In the event of a violation of rights by products from other manufacturers supplied by BITZER, the latter, at its own discretion, shall assert its claims against the manufacturers on the account of the Ordering Party or assign such claims to the Ordering Party. In such cases, claims against BITZER shall only be possible in accordance with this section 11 if enforcement by court order of the said claims vis-à-vis the manufacturers has failed or is futile, e.g. due to insolvency.
- 11.4. Unless otherwise agreed, BITZER shall, in respect of Deliveries rendered, grant to the Ordering Party a right to use such Deliveries permanently and in accordance with their usage purpose. This usage right shall be non-exclusive, non-transferable and with no limitation in time. This usage right arises with payment in full. Unless indicated separately, any usage fees are included in the agreed price.



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## 12. General Provisions

- 12.1. Any modifications and additions to the order confirmation, a contract and/or these GTCS-N as well as any ancillary agreements must be made in writing. This shall also apply to any modification to this requirement of written form. Reference is made to section 2.6 of these GCTC-I.
- 12.2. If one or more provisions of the contract and/or these GTCS-N is or are invalid, whether in whole or in part, this shall have no effect on the validity of the remaining provisions. The Ordering Party and BITZER agree to replace, in this case, the invalid provision with a valid provision which comes closest to the economic purpose of the invalid one.
- 12.3. If the Ordering Party is a merchant, a legal person under public law or a special fund governed by public law, the exclusive place of jurisdiction for all disputes from the contractual relationship shall be Sindelfingen, Germany. This shall also apply if the Ordering Party does not have a legal venue in the Federal Republic of Germany or if it has moved its usual place of residence abroad after the conclusion of the contract. BITZER shall, however, be entitled to take legal action against the Ordering Party at any other place of jurisdiction available under the applicable law.
- 12.4. The law of the Federal Republic of Germany shall govern the contract, these GTCS-N and the entire legal relationship between the Ordering Party and BITZER, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).