

**TERMS AND CONDITIONS OF SALE/BHS CORRUGATED-MACHINES/SYSTEMS**  
**of**  
**BHS CORRUGATED Corrugated Maschinen- und Anlagenbau GmbH**



(version: 01/02/2021)

**1. Scope**

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

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

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

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

**2. Conclusion of contract**

Offers of BHS CORRUGATED are subject to confirmation. A contract shall only be deemed to have been concluded upon a written order confirmation issued by BHS CORRUGATED or the signing of a written contract by both parties (both together referred to in the following as "Contract"). § 127 subpara 2 BGB (German Civil Code) shall apply, therefore, any transfer by telecommunication or by exchange of letters shall be deemed to be in writing resp. as a written contract.

**3. Subject Matter of the contract**

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

3.2 At the latest at the time of contract signature or when the Customer places his order Customer shall inform BHS CORRUGATED about all legal and technical regulation applicable for machine manufacturers regarding occupational safety

- requirements as well as all , technical requirements for the production, delivery, installation, and operation of the machinery or machine plant at its place of installation. 3.3 BHS CORRUGATED shall have the right to modify the technical and other specifications to the Products and change their design and materials without notice provided these modifications or changes are reasonable and do not affect the performance specifications stated in the Contract.
- 3.3 BHS CORRUGATED shall have the right to modify the technical and other specifications to the Products and change their design and materials without notice provided these modifications or changes are reasonable and do not affect the performance specifications stated in the Contract.
- 3.4 Insofar as BHS CORRUGATED software is installed on a Product sold to the Customer or otherwise transferred to the Customer due to a contract with BHS CORRUGATED , BHS CORRUGATED grants the Customer a simple, non-transferable right of use for the object code of the software limited to the system on which the software of BHS CORRUGATED was installed. The Customer is not entitled to make changes and additions to the software. BHS CORRUGATED reserves the right to make changes and additions to the software during the term of the contract insofar as these do not affect the existing system, in particular interfaces with the Customer. The Customer has no right to decompile or otherwise reverse-engineer the software, unless BHS CORRUGATED, despite several attempts within a reasonable time, is unable to eliminate defects that have occurred in the software and impede the operating procedure significantly, or to provide a workaround option. The source code of any software of BHS CORRUGATED is not subject to any grant of a license.
- 3.5 BHS CORRUGATED is entitled to commission subcontractors insofar as they are contractually bound by BHS CORRUGATED in the reciprocal confidentiality obligation between the Customer and BHS CORRUGATED.
- 3.6 Insofar as BHS CORRUGATED provides a VSE computer (VSE = virtual service engineer) or another computer for Remote Services/BHS Corrugated, which remains the property of BHS CORRUGATED at the operational site of the Customer's machines, the Customer shall have no right of use or access to the software installed on this/these VSE computer(s) or computer of BHS CORRUGATED.
- 3.7 BHS CORRUGATED reserves all property rights, copyrights and other industrial property rights as well as the protection of business and trade secrets to the programs and data on VSE computer(s) or another computer that is the property of BHS CORRUGATED; to illustrations, drawings, calculations, computer programs; to data and databases to which the Customer has access, e.g. via the iCorr® platform of BHS CORRUGATED; to models, tools, offer documents and other items; as well as to technical or commercial know-how, collectively referred to as "BHS CORRUGATED Information." It may not be made available for viewing by third parties or handed over in copy or as made accessible by BHS CORRUGATED without the express written consent of BHS CORRUGATED; cf. Clause 12 "Confidentiality" below of the Terms and Conditions of Sale. BHS CORRUGATED information may solely be used by the Customer in connection with the examination of the BHS CORRUGATED offer as well as on the occasion of subsequent contractual performance and the contractual use of the delivery items. BHS CORRUGATED Information must be kept secret from third parties and must be protected by the Customer through in-house organizational and technical means such as passwords etc. or by third parties to the extent required to prevent unauthorized access.
- 3.8 Computers, tools and other objects as well as data and data evaluations of or by BHS CORRUGATED, which are located at the site of the Customer or to which the Customer has access through or via BHS CORRUGATED, must be carefully stored by the Customer, provided that the objects that are the property of BHS CORRUGATED are to be protected by the Customer through technical and organizational access regulations in such a way that no unauthorized persons can access them. Any losses, damage or unauthorized access must be reported to BHS CORRUGATED immediately. The Customer shall be strictly liable in its area of responsibility in the event of damage or loss of the computer(s) transferred by way of lending or rental and for machines, tools or other objects that are the property of BHS CORRUGATED, as well as in the event of unauthorized access to the VSE computer(s) or other computer(s) that are the property of BHS CORRUGATED, as

well as to data and data evaluations of BHS CORRUGATED on BHS CORRUGATED's iCorr® platform, and in the event of a breach of confidentiality of the BHS CORRUGATED information named above in Clause 3.7.

- 3.9 The Customer and BHS CORRUGATED agree upon the conclusion of the Purchase Agreement which includes Remote Services/BHS Corrugated that BHS CORRUGATED may collect data (personal and/or machine and production data) at Customer's site, process and transfer these data on resp. to its own computers and use it without temporal limitation on the occasion of rendering Remote Services/BHS Corrugated to the Customer, for BHS CORRUGATED's own operational purposes, limited in scope by Clause 12 "Confidentiality" (below). If applicable, BHS CORRUGATED will anonymize personal data at the latest after rendering the Remote Services/BHS Corrugated.
- 3.10 The Customer warrants that the machines or systems for which it has also placed an order for Remote Services/BHS Corrugated will be used in accordance with the instruction manuals and that neither the Customer nor any third party will make any changes or additions to or interfere with or in the machines/systems without BHS CORRUGATED being informed in advance.
- 3.11 The Customer shall immediately inform BHS CORRUGATED of disruptions to machines or systems. Along with the disruption message, the Customer should give precise details of where the disruption has occurred and provide BHS CORRUGATED with the support required on the part of the Customer for rapid error analysis, including remote diagnostics, free of charge. Required technical documents as well as repair and maintenance evidence shall be provided or scanned and made available by email to the Customer at the site of installation of the machine/system.
- 3.12 The Customer shall provide employees of BHS CORRUGATED or authorized third parties with unrestricted access to the machine/system for the fulfillment of contractual obligations and, if necessary, provide BHS CORRUGATED with the desired assistance in the performance of its contractual obligations, , as further identified in Clause 7 below.

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

- 4.1 BHS CORRUGATED notifies its customers upon being contacted by the cus-

tomers about products and services of BHS CORRUGATED and corporate activities via email.

If, as a BHS CORRUGATED customer, you do not wish to receive further advertising or product and service information from BHS CORRUGATED, please let us know at this address: lifecycle@bhs-world.com.

- 4.2 The collection, storage, transmission and use of data of the Customer on the occasion of the Remote Services/BHS Corrugated of BHS CORRUGATED takes place via sensor technology on the relevant machine/system as well as via input by the operating personnel during operation of the machine/system. Here, BHS CORRUGATED collects production and machine data.
- 4.3 As far as any data are collected which qualify as personal data for either the Customer or BHS CORRUGATED the parties shall enter into an order data processing agreement.

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

- 5.1 Prices quoted in the Contract are fixed prices if not otherwise agreed. They comprise the provision of the machines ex works excluding value added tax or delivery costs such as packaging, freight, insurance, customs or other state duties due to a delivery to Customer which have from a financial point of view a similar effect like customs, assembly and installation etc. Any applicable value added tax will be invoiced in addition.
- 5.2 Invoices of BHS CORRUGATED must be transferred by the Customer to one of the specified bank accounts of BHS CORRUGATED within 30 days of the date of invoice without deduction of non-agreed discounts. Payment dates listed in the contract are binding and take precedence over the above payment period.
- 5.3 Unless otherwise agreed upon, payment to BHS CORRUGATED shall be made according to the following payment schedule:
- Thirty percent (30 %) of the purchase price as a down-payment upon conclusion of the Contract;
  - fifteen percent (15 %) within two months after conclusion of the Contract;
  - fifteen percent (15 %) four months before the scheduled date of delivery;
  - thirty percent (30 %) after BHS CORRUGATED's notice that the Products are ready for delivery;
  - ten percent (10 %) upon start-up.

- 5.4 BHS CORRUGATED's prices are based on the cost factors applying to producing and purchasing in the German engineering industry at the time of the conclusion of the Contract. Should these costs change for reasons beyond the control of BHS CORRUGATED, BHS CORRUGATED reserves the right to increase its prices by the amount of the increase in costs since conclusion of the Contract, provided the order date and the date of the first part shipment or the date of delivery are more than six months apart.
- 5.5 All claims of BHS CORRUGATED, which are not yet due, shall become due immediately irrespective of the term of any received and credited bills of exchange or granted respites, if any, in the event that the Customer does not comply with any applicable and agreed terms of payment or that any circumstances become known to BHS CORRUGATED which reduce the Customer's credit standing. In this case BHS CORRUGATED shall also have the right to effect outstanding deliveries only against prepayment or against prior provision of collateral security. Any additional legal claims of BHS CORRUGATED shall remain unaffected.
- 5.6 If the Customer defaults on payments within its business relationship with BHS CORRUGATED or if acceptance or taking delivery is delayed, BHS CORRUGATED is entitled to temporarily store the delivery items at the cost and risk of the Customer. In such cases, the total amount of the contract price, unlike other contractually agreed terms of payment, shall be due for payment upon unsuccessful expiry of a reasonable grace period.
- 6. Deadlines | Delivery Terms**
- 6.1 The terms of delivery within Germany shall be "ex works", boundary of BHS CORRUGATED's or its subcontractor's site. The risk of accidental destruction shall pass over to the Customer upon the start of loading the Products provided by BHS CORRUGATED for collection. International deliveries shall also be "ex works" (Incoterms 2010) from Germany. Any packaging material shall not be part of the Product and shall, on demand of BHS CORRUGATED, be returned to BHS CORRUGATED by the Customer free of charge or otherwise be disposed of at the expense of the Customer.
- 6.2 BHS CORRUGATED shall be entitled to make part shipments if the nature of the Products allows to do so.
- 6.3 Quoted delivery dates are to be considered as approximates unless they agreed upon in writing as fixed dates.
- Unless otherwise agreed upon in the Contract, the delivery term shall start with the date of the conclusion of the Contract between the two parties and shall not end before all necessary details of the delivery have been clarified by the Customer and all other contractual obligations of the Customer in connection with the delivery have been fulfilled plus, from case to case, a reasonable period of time for BHS CORRUGATED to arrange delivery.
- The contractual delivery term shall be deemed to have been met if BHS CORRUGATED has notified the Customer in time of its readiness to deliver, but the Customer does not or not sufficiently or only delayed contribute to assist to fulfill the Contract.
- 6.4 In the event of force majeure, such as but without limitation to
- an officially determined pandemic having direct effect on the fulfillment of contractual obligations of BHS CORRUGATED or a plant interruption not caused by BHS CORRUGATED, riots, delay of subcontractor's performance beyond the control of BHS CORRUGATED as well as
- in the case of substantial legal or administrative measures as for example punitive tariffs which increase 10 % of the contract price for the Product or other substantial non-tariff barriers as for example approval requirements for Products which increase 10 % of the own costs of BHS CORRUGATED for the distribution of a Product or any other events that BHS CORRUGATED cannot prevent,
- which were not known at the time of the conclusion of the Contract respectively order confirmation, BHS CORRUGATED shall be entitled either to postpone delivery for the duration of the impediment plus, from case to case, as reasonable restarting time or
- to withdraw from the Contract if a performance of the Contract cannot be reasonably expected.
- 6.5 If BHS CORRUGATED carries out the assembly, the BHS CORRUGATED/Terms and Conditions of Assembly, which are attached and/or are always available from BHS CORRUGATED by phone, fax or email, shall also apply, see [www.bhs-world.com](http://www.bhs-world.com), then click "Contact."

- 6.6 If a technical acceptance is desired, their conditions must be determined at the latest when the contract is concluded. The mutual costs of such acceptance shall be borne by the Customer. The regulations for acceptance in § 640 of the German Civil Code (BGB) (in force since 01/01/2018) apply with the provision that a right to refuse acceptance within the meaning of § 640 subpara 1 BGB presupposes the existence of a substantial defect, and that the provision of information on a substantial defect for a refusal of acceptance is required for a non-occurrence of acceptance in § 640 subpara BGB and that the substantial defect actually exists.

The agreement upon an acceptance to be performed does not qualify this Contract as a Contract for work.

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

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

## **8. Special Terms of Sale for Used Products**

- 8.1 Should the Customer purchase a plant or machine from BHS CORRUGATED which, as provided by the Contract, incorporates new and used components or even solely used components, BHS CORRUGATED will grant warranty according to Clause 9 of these Terms and Conditions of Sale for the new components. No warranty will be given for the used components of the plant beyond any provisions in Clause 8.2 of the Sales Conditions/BHS Corrugated.
- 8.2 If BHS CORRUGATED undertakes to deliver a used product or used components of a plant, warranty will only be extended to such used products or components, if BHS CORRUGATED has expressly agreed to examine such used products or components for their operability and repair them if necessary or if BHS CORRUGATED has expressly agreed to perform a general overhaul.

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

BHS CORRUGATED will grant a six months warranty from the date of delivery on all used products and components which have been subjected to a general overhaul. Clauses 9.2 to 9.10 shall apply accordingly, in so far as warranty is granted by BHS CORRUGATED. Any claims based on a violation of any collateral contractual duties according to § 241 subpara 2 German Civil Code (BGB) arising in connection with a defect shall become statute-barred within the same six months period from the time of delivery which applies to all other contractual warranty claims.

- 8.3 If the parties agree that a used product or component be repaired or subjected to a general overhaul before delivery, a major repair or general overhaul may make it necessary for BHS CORRUGATED to furnish a new operating manual for the overhauled or repaired system. This will cause considerable costs not covered by the calculated price. In this case, the Customer undertakes to prepare an operating

manual itself which complies with all legal requirements for the operation of the Product at the site of installation. BHS CORRUGATED will remind the Customer of this obligation again in writing at the time of delivery. The Customer shall hold BHS CORRUGATED harmless against any and all claims arising out of or in any way associated with the lack of such operating manual upon first request by BHS CORRUGATED if such claims are made by any third party and indemnify BHS CORRUGATED in particular from any and all expense including litigation costs and attorney's fees.

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

## 9. Claims based on Defects (Warranty)

9.1 The warranty period shall be twelve (12) months from the date of transfer of risk or, in the case of the Customer delaying acceptance, from the date of notification of the Products' readiness for delivery. Any claims based on a violation of any collateral contractual duties according to § 241 subpara 2 German Civil Code (BGB) arising in connection with a defect shall become statute-barred within the same twelve months period from the time of transfer of risk which applies to all other contractual warranty claims. If a defect claim is based on intent, bad faith, or gross negligence on the part of BHS CORRUGATED or its organs or vicarious agents or in the case of loss of life, limb or health, the statutory limitation period of 2 (two) years applies to claims under Clauses 9.1 sentences 1 and 2. The limitation periods for tort claims remain unaffected by Clause 9.1.

9.2 Any agreement to perform a formal technical acceptance shall not have any effect on the start of the warranty period as defined in Clause 9.1. BHS CORRUGATED and the Customer will inspect the Product or Products for conformity with the Contract within a week after BHS CORRUGATED's notice of the Products' readiness for acceptance and then sign the required acceptance protocol. In the case of identified defects or deviations, which limit the operability of the goods or of the delivery items insignificantly in comparison with their contractually intended or usual use as agreed in individual cases, the Customer shall record the same in an error log for acceptance and sign the acceptance report. If the Customer does not participate in the acceptance procedure

or does not cooperate in the way stipulated by the Contract, the Product or Products shall be deemed accepted as of four months after notice of its/their readiness for acceptance, provided BHS CORRUGATED has pointed out this consequence in its notice. If the Customer is able to refuse acceptance, BHS CORRUGATED is entitled to indicate a new readiness for acceptance after the defect has been eliminated (restoration of contractual conformity). If part shipments have been agreed upon, the Customer shall also accept such part shipments.

9.3 If no acceptance procedures have been agreed upon, the Customer shall inspect the Product immediately upon receipt for any defects or variations from the contractual specifications (non-conformity with the Contract) and, if applicable, notify BHS CORRUGATED accordingly in writing. In the case of hidden defects or deviations, the same applies as of the initial discovery by the Customer.

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

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

9.5 BHS CORRUGATED shall grant the same Warranty on any parts exchanged during the warranty period as for any services to be performed in accordance with the Contract. Such Warranty shall end, however, not later than 18 months (for overhauled parts: 12 months) after the original transfer of risk of the part. Clause 9.1 sentence 3 also applies here.

9.6 Within the warranty period, BHS CORRUGATED shall remedy, free of charge, any

- defects (lack of conformity) which can be proven to have existed at the time of risk transfer either by replacement or repair at the discretion of BHS CORRUGATED. If a replacement or repair with respect to the same defect is repeatedly unsuccessful, or if BHS CORRUGATED refuses, without cause and definitely, to replace or repair the Product or part of it, or if a delay in performance of these obligations is not acceptable to the Customer, the Customer shall be entitled to reduce the price or to rescind from the Contract after having set a reasonable time limit and having advised BHS CORRUGATED of the intended legal consequences.
- 9.7 For the execution of repairs under Warranty, the Customer shall provide free of charge the necessary personnel and in particular the necessary lifting and conveying devices at the time required. Any costs for packaging and transport of defective parts that have to be sent back shall be refunded by BHS CORRUGATED to the Customer against proof of payment and invoice. If a part is replaced, the ownership to the part shall be automatically transferred from the Customer to BHS CORRUGATED with the removal of the part from the machine or plant and, by the same token, the ownership to the replacement part from BHS CORRUGATED to the Customer with the installation of the replacement part, as governed in Clause 11. On the demand by BHS CORRUGATED, the Customer shall return removed parts to BHS CORRUGATED.
- 9.8 A claim of the Customer for reimbursement of the necessary expenses for the removal and the installation or the mounting of the repaired or delivered faultless items presupposes that BHS CORRUGATED did not carry out the aforementioned works despite written request of the Customer, or did not carry them out properly, and the contractual object was installed or mounted onto another item by the Customer for its intended purpose, or vice versa, another item was mounted onto the contractual object, of which BHS CORRUGATED was positively aware upon conclusion of the contract. This applies in particular to the connection of other machines or devices to the contractual object and to connection with third-party software, third-party sensors and external data that may influence the operation of the contractual object.
- 9.9 If the Customer fails to cooperate in order to carry out the replacement delivery or elimination of defects, or if it refuses to accept supplementary performance, the further warranty shall be void.
- 9.10 In the event of a defect or error, the liability for compensation for damages shall not apply if the slightest or simple negligence has resulted in damage. This basic limitation of liability does not apply in the event of a breach of a guarantee or loss of life and injury to limb and health.
- 9.11 The Warranty shall not apply to defects resulting from normal wear and tear, improper or negligent use, excessive load, unsuitable expendables or materials or use by the Customer not in accordance with the operating conditions specified in the Contract. This shall also apply to defects caused by an unsuitable site of installation or by a condition unforeseeable for BHS CORRUGATED at the time of concluding the Contract. This does not affect the Customer's claim to warranty in the case of proof of a defect by the Customer, which existed at the time of transfer of risk despite the restrictions in Clause 9.11 sentences 1 and 2.
- 9.12 Data or characteristics of the purchased item shall not be considered as guaranteed properties, unless such a guarantee has been expressly agreed with BHS CORRUGATED in writing or has been declared in writing by BHS CORRUGATED.
- 9.13 BHS CORRUGATED may defer the correction of defects if the Customer is in delay with its due payments or obligations to cooperate.
- 9.14 If BHS CORRUGATED sells the contractual object to the Customer within a supply chain and the Customer itself resells the contractual object, the Customer undertakes to include BHS CORRUGATED in its elimination of defects in the event of a claim due to a defect in the contractual object. A right of the Customer against BHS CORRUGATED for reduction, withdrawal and/or a claim for damages arising from a defect presupposes that BHS CORRUGATED had the possibility to eliminate the defect or to perform a replacement delivery. This also applies to the entitlement to reimbursement of expenditures on the occasion of an elimination of defects. Section 9.8 applies analogical.
- 9.15 If any defect should be fraudulently concealed by BHS CORRUGATED or in case an express guarantee for a specific characteristic was agreed on with the Customer the limitations of warranty in clauses 9.1, 9.5, 9.6, and 9.10 above shall

not apply. Instead the applicable statutory regulations shall apply.

## 10. Liability

10.1 BHS CORRUGATED, its organs and its vicarious agents are liable in the event of culpable violation of contractual obligations, of culpable pre-contractual and additional contractual obligations, in tort and for any other legal reason not separately regulated in these Sales Conditions/BHS Corrugated, limited to cases of intent, bad faith, and gross negligence.

10.2 In the event of impossibility, inability or in the case of culpable violation of another essential contractual obligation (vertragswesentliche Pflichten), BHS CORRUGATED shall be liable solely to the exclusion of cases of the slightest negligence. Essential contractual obligations are those which entail mutual obligations and the infringement of which jeopardizes the achievement of the purpose of the contract and the fulfillment of which makes the proper execution of the contract possible and on the fulfillment of which the Customer can therefore rely. In cases of gross or simple negligence BHS CORRUGATED's liability under this Clause 10.1 subsection 2 shall be limited to such damages, which could have been foreseen by BHS CORRUGATED at the date of its contract signature, by applying the due care of a prudent businessman, as potential result of a culpable violation of essential contractual obligations.

10.3 The provisions on liability for damages in the case of defects in Clause 9.10 of these Sales Conditions/BHS Corrugated shall prevail.

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

## 11. Reservation of Title

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

11.2 BHS CORRUGATED may after written notice to the Customer and the passing of a reasonable period of grace assert its claim for surrender of the Products, if the Customer is in delay with its payment of the purchase price in part or as a whole and/or if it becomes known after the conclusion of the

Contract that BHS CORRUGATED's claims for payment are at risk due to an inability to perform on the part of the Customer.

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

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

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

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

## 12. Confidentiality

12.1 BHS CORRUGATED information, cf. Clauses 3.7 and 3.8 of these Terms and Conditions of Sale, as well as all information otherwise provided by BHS CORRUGATED, may not be made available to third parties unless they are clearly intended for other persons aside from the Customer, as far as this is not required as part of the intended use of the delivery items by the Customer. For the purposes of this Clause, "third parties" are natural persons or legal entities that are not the Customer's organs or employees, as well as such contractors of the Customer who fail to commit themselves in writing to comply with the confidentiality provisions in Clauses 3.7 and 3.8 as well as Clause 12 of these Terms and Conditions of Sale.



12.2 In the event of a breach of the confidentiality obligations in Clause 12.1 by a person assignable to the Customer (organ, employee and/or contractor), the Customer undertakes to pay a penalty in the amount of EUR 10,000 per infringement subject to further claims for damages. Upon request, the Customer shall provide complete information about the manner in which the BHS CORRUGATED Information is used, and in particular about any contractor of the Customer who violates these confidentiality obligations.

12.3 BHS CORRUGATED undertakes with respect to the Customer not to transfer to third parties any data (personal and machine data) of which it gains knowledge on the occasion of Remote Services/BHS Corrugated to the Customer. The same applies to the evaluations of data for the Customer.

12.4 BHS CORRUGATED may use the data of the Customer to whom it has access via Remote Services/BHS Corrugated for its own business purposes within the limits of Clause 12.3 above.

As far as also personal data are concerned the indication of data protection in clause 4.3 above is pertained.

### 13. (Re) Export, Embargo

13.1 Both parties warrant that they comply with all laws and regulations regarding the (Re) Export of the Products and/or parts thereof applicable in Germany, the European Union, the country at the place of business of the Customer, and/or the site of installation of the Product or of an Involved Third Country. "Involved Third Country" in shall mean for the purposes of this Clause a country of origin of a Product or parts therefrom which may impose restrictions on either party concerning exports as e.g. the US Commerce Control List.

13.2 The same shall apply to state embargo restrictions which effects the Product or parts thereof.

13.3 If BHS CORRUGATED fails to deliver the Product or parts thereof due to reasons mentioned in Clauses 13.1 or 13.2 above, this shall be treated as a force majeure event under Clause 6.4 above.

13.4 Should the Customer breach his obligations under Clauses 13.1 and 13.2 above, the Customer shall indemnify BHS COR-

RUGATED from all liabilities towards any third party, and shall compensate BHS CORRUGATED all costs of the necessary legal defense.

### 14. Miscellaneous

14.1 This Contract or any right or claim based on it may not be transferred or assigned to any third parties without prior written consent of the other party.

14.2 The Customer is only entitled to declare a setoff or to assert a right of retention vis-à-vis BHS CORRUGATED, including a commercial right of retention, if the claim in question is undisputed or has been legally established by a court of law or in the event of a gross breach of contract by BHS CORRUGATED.

14.3 Should any provision of these Sales Conditions/BHS Corrugated be or become ineffective, the other provisions herein shall remain in full force and effect. The parties to this Contract shall replace the invalid provision by a legally effective provision which is in content and purpose the most similar to the invalid one. This shall also apply in case of a missing regulation in the Contract.

14.4 The law of the Federal Republic of Germany applies, to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

In case of any discrepancy or contradiction between the German language version and a no-German language version the German language version shall prevail.

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

The place of jurisdiction for any legal disputes arising from or in connection with this contract for legal proceedings against Customers shall be, at the discretion of BHS CORRUGATED, the registered office of BHS CORRUGATED (see Clause 1.1) or another legal place of jurisdiction, and, in the event of legal proceedings by the Customer against BHS CORRUGATED, it shall be the registered office of BHS CORRUGATED. This jurisdiction agreement applies only to merchants within the meaning of commercial law.