

Conditions of Sale and Supply for Bing Products

(Edition October 2004)

1. Quotations and Contract Finalization

- a) Our quotations shall always be deemed to be subject to alteration without notice, unless specifically limited in time.
- b) The handling of all transactions will be exclusively based on the following individually listed conditions of sale and supply, also in the event of any other conditions of purchase involved. Our conditions shall be deemed to have been agreed to upon acceptance of the goods at the latest date. Supplementary arrangements and promises made by our representatives shall only be valid when confirmed in writing by us. Contracts shall be based on German Law.
- c) If after signing of a contract justified doubts on the financial position of the purchaser or his solvency should arise, we shall be authorized to withhold delivery until our claims are secured. Furthermore, we are entitled to request security for our claims within a reasonable period. On expiry of such a period we reserve the right to withdraw from the contract with due assertion of our claims.
- d) An order is only accepted when it has been acknowledged by us in writing. Our written acknowledgement of order will be decisive for a contract.

2. Non-disclosure

- a) We reserve the right of ownership and copyright in respect of drawings and other particulars, as well as samples: same shall not be made available to any third party without our prior approval in writing. Attachments to our quotations like drawings and particulars shall be returned to us without delay on request or if any order is not forthcoming. The purchaser shall be solely responsible for any requisite official approvals. Our details of sizes and weights as well as illustrations and drawings are only binding when this has been confirmed in writing by us. Designs are subject to modification.
- b) The use of our trade name "BING-VERGASER" and our internationally protected trade mark is not permissible without our approval.

3. Prices

- a) All prices apply for "ex works" delivery, excluding packaging, unless otherwise confirmed by us.
- b) We reserve the right to make reasonable price amendments in the event of increases. The new prices and terms for OEM buyers will from the time of notification apply to all subsequent deliveries. The date of validity for prices of spare parts (list prices) will be decided upon in each individual instance.
- c) The manufacturers of engines or equipment (initial-fitting-out) shall order their requirements in respect of individual parts as well as complete carburetors, throttle bodies, pumps, filters, oil spray jets etc. for spare part supplies separate from the initial equipment and on the basis of our relevant valid list prices (Note: This is an important prerequisite for continued allowance of favorable production prices).

4. Transfer of Risk

The risk will be transferred to the purchaser – also in case of carriage- paid delivery – when the consignment leaves the supplier's works or is made available to the purchaser for collection or the goods are placed in storage for the purchaser.

5. Transport Insurance

If transport insurance coverage by us is desired, please specify this in the order. This will be invoiced at the cost price for us.

6. Dispatch

Unless special dispatch instructions are specified by the purchaser, we shall arrange dispatch by the method we consider to be most favorable. We do not accept any liability for transport arrangements being to schedule or for the amount of the transport costs.

7. Payments

- a) Prices are always understood to be exclusive of Value Added Tax, which will be added at the statutory rate in force at the time. Payment shall be deemed to have been effected on the date on which we can dispose of the amount. If payment has not been made in cash, it shall be deemed to have been effected when it has been definitively credited to one of our accounts. In the event of any delay in payment, interest shall be payable at the overdraft rate charged by our own bank at the time (including credit and overdraft charges) plus statutory Value Added Tax. Our claims shall fall due immediately if our conditions of payment are not adhered to or if any facts become known which according to proper commercial discretion cast doubt on the purchaser's creditworthiness.
- b) No payments may be retained by the purchaser, unless claim and counter claim are based on the same contract.
- c) If the acceptance of delivery is refused without justification, the terms of payment granted will become null and void, and the price agreed upon will become due for payment immediately. At the same time the total outstanding balance owed by the purchaser, also on the basis of other transactions, shall fall due for immediate payment. Furthermore, on the date of refusal of acceptance the period of complaint according to clause 11a) shall begin. In addition, we shall be authorized, in the event of refusal of acceptance of goods for reasons beyond our control, after setting a reasonable additional period, to withdraw from the contract or claim penalties due to non-fulfillment of the contract. This will not be to the exclusion of our further claims or damages.
- d) Unless specifically agreed otherwise, payment by bill of exchange shall be excluded. Any acceptance, in exceptional circumstances, of bills of exchange shall only be valid for as long as no adverse changes occur or become known in the purchaser's financial circumstances. Payments by bill of exchange do not constitute cash payments; no discounts may therefore be deducted. Any discount or bill or exchange charges shall in all cases be payable by the purchaser immediately after notification thereof.

- e) Any acceptance of cheques and bills of exchange is not effected in lieu of performance, but with a view there to.
- f) Unless otherwise agreed in writing, deliveries abroad will only be made against a confirmed irrevocable, multi-transferable and divisible documentary letter of credit, established at a bank to be designated by us and involving no charge to us.
- g) We reserve the right to assign our claims to a third party (factoring).

8. Proportionate Tooling Costs

- a) Shall always become due for payment in cash, strictly net, without any deductions, upon receipt of invoice and issue of a reference sample or, if no reference samples are required, not later than the first production delivery.
- b) In so far as new complete throttle bodies, carburetors, pumps or other equipment with proportionate tooling costs already paid are supplied as production items to so-called third party customers, we shall credit an appropriate part amount for each item sold elsewhere, up to half of the proportionate tooling costs paid, to the original purchaser according to special arrangements in each case after receipt of the relevant payments, at half-yearly intervals.
- c) Tools, fixtures and patterns shall remain our exclusive property even after partial or complete payment.

9. Modification Charges or Individual Manufacturing Costs

- a) Such costs for samples or prototypes shall fall due for payment in cash, strictly net, without deductions, on receipt of our invoice. In the case of complete units or parts sent to us for modification, the modification costs to be laid down from case to case shall apply, on the understanding that the items to be modified shall be delivered to our works in a complete and satisfactory or new condition, packing and freight charges paid.
- b) If after agreement on the price it is found on the subsequent modification work being carried out that parts are missing or cannot be employed, they will be charged for in addition to the price agreed upon.

10. Delivery Dates

- a) The delivery dates indicated are not binding. The period of the delivery quoted by us will start after clarification of details decisive for the handling of the order in accordance with our acknowledgement of order.
- b) The quantities not yet specified for delivery by the purchaser will have a delivery period of 2 to 3 months less than the total delivery period confirmed, after notification of the delivery specifications.
- c) In no case can the seller be held responsible for any delay or non-delivery due to the fault of any of the seller's subcontractors.
- d) We shall be relieved of delivery obligations undertaken in the event of: Obstructions to work of all types, force majeure, strikes, fires and lock-outs in our company or with our sub-contractors, as well as all other causes or events which hinder the incoming supplies, production or dispatch, late receipt of materials or other unforeseen difficulties during the full period of their influence

and also respect of their consequential influence. Claims for damages due to non-fulfillment or late delivery shall not be entertained in any case.

- e) In the event of cancellation of orders or call-offs which are not the responsibility of the supplier, such goods as have already been finished or are process of being finished must be taken over at the selling price. Any production material which cannot be used otherwise will be invoiced to the purchaser at cost.

11. Quantities Delivered

- a) We shall be authorized to make part deliveries.
- b) Unless otherwise agreed upon in writing, short or excess deliveries up to 5 % of the quantity ordered shall be permissible.

12. Complaints

- a) Complaints in respect of quantity, construction and quality can only be entertained within 14 days after receipt of the goods. The purchaser is obliged to check the goods for any deficiencies immediately on receipt and submit any complaints to us in writing.
- b) No complaint can be derived due to modification to design or construction which is carried out by us **in general** on the goods involved.

13. Guarantee

- a) We accept liability for the quality of products supplied as brand new, in so far as we shall, at our option, repair or replace items justifiably complained about within a period of 12 months from the date of delivery. It must be proven that poor material or bad workmanship is involved which considerably influences the satisfactory functioning of our products and such faults have occurred before the transfer of risk. Return of the goods in question has to be agreed upon with us before return has actually effected. Before this, some samples with exact details of the complaint are to be sent to us for examination. Any claims must be made in writing immediately after discovery of the fault, while providing specific details of the complaint. Generalizations such as "faulty", "high consumptions", "inferior performance" are insufficient.
- b) In the event of subsequent modification of our products by us at the request of the purchaser, our warranty will begin from the original date of delivery of our brand new products.
- c) All claims will automatically become invalid in the event of damage by violence, incorrect handling and storage and furthermore, in particular, due to the use of parts other than original as this would no longer ensure satisfactory operation of our original products.
- d) Our rectification of deficiencies will also become invalid if steps are taken to remedy complaints without our written approval. The same applies to any damage by dirt or corrosion on the outside of the goods supplied by us.
- e) The obligation of improvement or replacement shall no longer exist as long as the purchaser fails to fulfill his contractual obligations.
- f) BING products (carburetors, throttle bodies, oil spray jets, fuel pumps etc.) are developed and accurately designed for a certain product (engine/device etc.) and its particular use – mostly in close cooperation with our OEMs. Each of

our products carries a special type number which stands for all details of our product and its utilization.

We are exempt from every defect-related service and product liability in the event of:

Deviant use of one of our products for engines, vehicles, devices etc. other than those defined under the product number.

Later changes to our products, even if those changes are not the cause of the damage.

Use of samples (sample carburetors ordered for testing purposes, etc.).

Use of our products for competitive purposes (racing etc.) even if our product is defined as suitable for this purpose with a special number.

Furthermore please note that our defect-related services become invalid – at the latest - when the guarantee runs out for the engine or device for which the product is used, even if the one year period named in our terms has not yet come to an end.

14. Retraction of Goods Delivered

- a) We can only retract goods from our deliveries, against a credit note and only in exceptional cases, unused new goods in perfect and complete condition and in compliance with the latest technical developments provided that a possibility exists to employ them elsewhere. If these requirements are not fulfilled, we reserve the right, in the event of deficiencies subsequently discovered, to return the goods carriage forward of charge the costs for remedy of the deficiencies.
- b) The return of goods delivered can only be carried out after our prior approval.
- c) Return shall be carried out then to our works with packing and freight charges paid. Any charges of fees paid by us will be charged to the purchaser or optionally deducted from the credit note.
- d) In the event of retract of goods against a credit note; the amount to be credited will be reduced by a lump sum of 10 % of the net value of the goods for the expenses resulting for us. In so far as special checking is necessary the resulting actual costs for us will also be deducted from the amount for crediting (e.g. in the case of all jets, complete carburetors and pumps).

15. Ownership Reservation

- a) We reserve ownership of the goods until all our claims arising from the transaction as well as future claims, including those arising from contracts concluded at the same time or at a later date, have been met. This also applies if some or all sellers' claims have been included in a current account and the balance has been drawn and accepted.
- b) The purchaser shall be entitled to the resale of the goods subject to ownership reservation in normal business transactions. He shall, however, be obliged to secure our rights as seller with ownership reservation in the event of resale of goods subject to ownership reservation on a credit basis. The claims, complete with subsidiary rights, arising from resold goods subject to ownership reservation shall already at this stage be assigned to us by the purchaser as

security to the amount of our total claims arising at any time from deliveries and services. This assignment is accepted by us.

Notwithstanding the assignment and our right of repossession the purchaser shall be entitled to repossession as long as he fulfills his obligations towards us. At our request the purchaser shall provide us with such information concerning the assigned claims as is required for repossession and notify the creditors of the assignment (prolonged ownership reservation).

- c) In the event of the goods subject to ownership reservation being combined with other goods not belonging to us, we shall be entitled to the resulting co-ownership share in the new object in the ratio between the value of the goods subject to ownership reservation and the other goods at the time of the combination. If the purchaser acquires sole ownership of the new object in accordance with Art. 947, § 2, of the German Civil Code, it is agreed between the contracting parties that the purchaser shall grant us co-ownership of the new object in the proportion of the value of the relevant goods covered by ownership reservation and keep it in safe custody for us in the sense of constitution of property in accordance with Art. 930 of the German Civil Code (extended ownership reservation). Any third-party attachment measures affecting the goods subject to ownership reservation or the claim assigned to us in advance must be notified to us by the purchaser without delay, complete with the supporting documents required for intervention.
- d) If the purchaser infringes the agreed ownership reservation, we shall be entitled – without prejudice to our other claims – to demand the surrender of the goods not paid for and collect these from the place of storage. The purchaser shall then have no further ownership rights.

16. Patent Rights Claims or Third Parties

On placing the order, the purchaser gives assurance that no patent rights claims of third parties exist or have been filed, and such rights will not be infringed upon by our production. If such patent right claims are filed against us, the purchaser undertakes to save us harmless at his expense. We shall be authorized to cease our production immediately. The purchaser will be liable for all resulting loss or damage. If we should be unable to make delivery due to violation of patent rights of third parties which were unknown to us at the time of signing the contract, we shall be relieved of our obligations to deliver. The purchaser shall not be entitled to claim damages.

17. Liability

We shall at all times only be liable for any negligence on our part, for negligence on the part of our agencies, executives, employees, workers, and other agents on whatsoever legal grounds, but in particular for negligence during contract negotiations, positive breach of contract, tort, product liability, etc., when these were committed with deliberate intent or through gross negligence.

18. Venue for all obligations under the contract is the registered place of business of the seller.

19. In so far as individual ruling of these business conditions are or become legally ineffective this may not influence the effectiveness of the remaining rulings. Otherwise, German law shall apply except for the “Uniform Law on international Sale of Goods” and the “Convention relating to a Uniform Law on the Formation of Contracts for the international Sale of Goods.

20. Our above terms and conditions shall be considered as accepted with each new order. Deviations from these terms and conditions shall only be applicable following our written agreement to such.