

1. Scope

- 1.1 These terms and conditions of installation apply to the rendering of installation services by Bizerba SE & Co. KG (hereafter referred to as "BIZERBA") and are supplementary to the product-specific installation descriptions (hereafter referred to as INSTALLATION DESCRIPTIONS) (number 2).
- 1.2 These terms and conditions of installation apply with the exception of any deviating business terms of the client in as far as these refer to the rendering of installation services. Application of the business terms of the client shall be explicitly excluded.
- 1.3 Installation orders, which BIZERBA are issued as a result of standard form purchase conditions or other terms and conditions of the client shall continue to apply even if BIZERBA does not expressly contradict the terms and conditions of the client when these terms and conditions of installation are enforced.
- 1.4 Agreements which alter or supplement these installation conditions, side agreements as well as conditions of the client shall only be effective only if they are confirmed in writing by BIZERBA. Our trade representatives and commercial travelers are not authorized to award or approve binding statements.

2. BIZERBA INSTALLATION SERVICES

- 2.1 Within the scope of installing hardware BIZERBA is due generally to unpack, set up, mount, and take care of commissioning as defined in the respective product-specific INSTALLATION DESCRIPTIONS unless otherwise provided for.
- 2.2 Within the scope of installing software BIZERBA is due generally to load the software and configure the databases as defined in the respective product-specific INSTALLATION DESCRIPTIONS unless otherwise provided for. Software installation does not include interface modifications or establishing connections to third-party software or hardware unless expressly agreed otherwise.
- 2.3 The services in accordance with clauses 2.1 and 2.2 are hereafter referred to as INSTALLATION SERVICES / Installation.
- 2.4 The respective product-specific INSTALLATION DESCRIPTIONS are an integral part of the installation agreement and are brought to the client's attention separately but at the latest together with these terms and conditions or by request from BIZERBA.

3. Establishment of the contract

- 3.1 A contract for an INSTALLATION SERVICE shall come into being when the customer places an order or receives a corresponding order confirmation from BIZERBA. This can take place already upon placement of the order for the hardware and/or software or at a separate point in time.
- 3.2 An installation appointment shall be deemed set as soon as the date is confirmed by BIZERBA.
- 3.3 BIZERBA is at liberty to have the INSTALLATION SERVICE carried out by specialized personnel from Bizerba's own plant or from another authorized third party (hereafter both instances are referred to as SPECIALIZED PERSONNEL).
- 3.4 BIZERBA is reserved the right to carry out the installation module by module with regard to INSTALLATION SERVICES that continue for longer than two months. For installations carried out module by module, we reserve the right to determine the place of performance, provided that nothing to the contrary has been agreed.

4. Duties of the client before and during the INSTALLATION SERVICE

The client is obliged at no charge:

- 4.1 to establish the prerequisites and conditions and carry out any advance work to prepare for the installation of hardware and/or software in accordance with the product-specific INSTALLATION DESCRIPTIONS,
- 4.2 to establish all on-site prerequisites as well as access to the Internet in accordance with the respective product-specific INSTALLATION DESCRIPTIONS in order to prepare for the installation of the hardware and/or software in due time before commencement of the installation work,
- 4.3 to store the supplied products to be installed safely until the installation date at a suitable location and at his own risk,
- 4.4 to transport the products and components to be installed to the agreed place of installation or place of use before the installation date,
- 4.5 to save the necessary data in the event that software is to be installed and to make available information about the respective network settings, also to provide the necessary access for the installation and/or to acquire the required licenses at his own cost,
- 4.6 to make available the tools and equipment, machines and lifting devices (e.g. forklift truck, crane, etc.) stipulated in the INSTALLATION DESCRIPTIONS and to have any necessary scaffolding set up at the place of installation and to keep these items available for the entire duration of the installation,
- 4.7 to provide the required resources, e.g. power supply, water, compressed air, heating and sufficient lighting for the INSTALLATION SERVICE for the duration of the installation,
- 4.8 to make available an appropriate number of the required suitably qualified personnel to provide assistance during the installation as stipulated in the product-specific INSTALLATION DESCRIPTIONS. Support staff must follow the installation instructions provided by the SPECIALIZED PERSONNEL, however authority in terms of industrial law to issue directives to the support staff remains with the client,
- 4.9 To safely store all tools, incidentals, technical drawings and other devices belonging to BIZERBA for the duration of the installation and to make available a suitable dry room that can be locked,
- 4.10 to support the INSTALLATION SERVICE with suitable measures during installation and, for example, to take reasonable measures to prevent the installation from having to be interrupted, also to ensure access to the place of installation; the client is responsible for maintaining operation of his business during this time,
- 4.11 to provide adjusting weights and standard weights unless these have been ordered separately from BIZERBA,
- 4.12 to ensure in good time, as required, that an officer from the relevant calibration authority is available at the agreed date,
- 4.13 to communicate the safety regulations and any existing hygiene conditions to the SPECIALIZED PERSONNEL and to take the necessary precautions to protect the SPECIALIZED PERSONNEL, for example by providing suitable staff room with wash and shower facilities as well as sanitary facilities for the SPECIALIZED PERSONNEL.

5. Consequences in the event of non-performance of duties as per clause 4 by the client, force majeure

- 5.1 If the duties as per clause 4 are not fulfilled or not fulfilled entirely by the client, the client shall be required to provide compensation for the time and expenses incurred as a result of the fruitless journey or for work time or waiting time, in accordance with clause 8.3, p. 2. Damage incurred by BIZERBA due to violation of duties as per clause 4 shall be compensated for by the client.

5.2 The installation date shall be postponed in the event of 5.1 in as far as the INSTALLATION SERVICE has not yet been started; the installation duration shall pause if the violation of duty occurs during the period of installation.

5.3 The installation date shall also be postponed in the event of unforeseeable events or in the case of force majeure commencing before the start of the INSTALLATION SERVICE without the client incurring any claims for damage. The installation period shall be extended appropriately in the event of an interruption after commencement of the INSTALLATION SERVICE. Force majeure refers to events that occur due to the forces of nature or by actions of third parties, e.g. floods, earthquakes, storms, fire, unrest or strikes.

6. Acceptance

6.1 The client is required to accept the (partial) INSTALLATION SERVICE immediately upon completion or partial completion of the service has been announced and at the latest upon commissioning.

6.2 Acceptance cannot be refused based on ascertaining a minor fault. Removal of a fault is in accordance with clause 7.

6.3 The INSTALLATION SERVICE shall be considered accepted even if, upon expiry of 2 weeks following the announcement of completion of the INSTALLATION SERVICE or following commissioning acceptance is not declared.

6.4 With acceptance, the INSTALLATION SERVICE shall be considered faultless in terms of recognizable defects providing the client has not reserved the right to assert recognizable defects at acceptance.

6.5 In cases of clause 3.4, BIZERBA can demand acceptance of partial services.

7. Warranty from BIZERBA

7.1 Upon acceptance of the INSTALLATION SERVICE BIZERBA is liable for faults in the INSTALLATION SERVICE regardless of clause 9 and non-performance. Bizerba shall decide whether to rectify the error or re-perform the installation.

7.2 The client is required to inform BIZERBA immediately in writing upon ascertainment of the fault. This shall also apply if BIZERBA in accordance with the respective INSTALLATION DESCRIPTION or agreement takes over unpacking of the product from the SPECIALIZED PERSONNEL.

7.3 There is no case of warranty in the event of amendments or maintenance work that has been improperly carried out without previous authorization from BIZERBA. The client may remove the fault at his own risk only in urgent cases in which the operating safety is endangered or in order to prevent disproportionately large damage and hazards, of which BIZERBA must be notified immediately - or in the event that BIZERBA allows a reasonable period in which to remove the fault to expire.

7.4 There is no case for warranty with respect to faults that result from missing or incorrect specifications from the client with regard to his duties as per clause 4. This applies in particular to information or characteristics related to the ambient conditions, structural substance, chemical, electro-chemical, electro-mechanical, electro-static, electro-magnetic or electrical influences at the place of installation or should the required software licence for the INSTALLATION services not have been provided in advance.

7.5 The right to warranty for faults in terms of the INSTALLATION SERVICE shall expire 12 months following acceptance or readiness for acceptance of the INSTALLATION SERVICE. The warranty period does not apply to claims for damages based on liability for defects caused by grossly negligent or intentional breaches of duty by BIZERBA or its vicarious

agents, or in case of injury to life, limb or health. Clause 9 applies to other claims for damages.

8. Compensation

8.1 INSTALLATION SERVICE from BIZERBA are remunerated by the fixed sum as per the respectively valid price list, providing no other fixed sum or charge based on time and materials has been agreed.

8.2 Fixed sum:

When the agreed fixed sum is paid, this shall include remuneration for the travel time, travel costs as per the list in clause 8.4 and the work time for the INSTALLATION SERVICES in accordance with the agreed scope of service or the respective product-specific INSTALLATION DESCRIPTION. The work time refers to the time required by the SPECIALIZED PERSONNEL for the INSTALLATION SERVICE. The travel time is the time taken by the SPECIALIZED PERSONNEL for the journey to and from the installation location.

8.3 Subsequent requests made by the client, e.g. adjustment or connection to third-party devices shall, if commissioned, be settled based on time and materials providing nothing else has been agreed in writing. Time spent waiting due to the client is liable to costs; the hourly rates comply with the respectively applicable price list.

8.4 Charge based on time and materials: Settlement based on time and materials complies with the respectively applicable price list (this can be requested from Bizerba) re.:

- Remuneration for work time spent on the INSTALLATION SERVICE according to the product-specific INSTALLATION DESCRIPTION

- Remuneration for waiting period

- Remuneration for travel time

In addition to actually incurred costs, the following are also included:

Travel expenses

- Accommodation/living expenses

- Expenses for required visa and auxiliary travel costs

- Costs for additional living expenses

- Expenses for required transport to and from the place of installation and costs for communication

- Costs for the required materials for the INSTALLATION SERVICE.

- Costs for any agreed additional customer requests.

8.5 If the INSTALLATION SERVICE becomes impossible as a result of circumstances caused by the client, the client is required to cover the costs of the installation incurred up to this point in time. However at least 5% of the agreed remuneration.

8.6 With his signature on the work record the client shall confirm the work time/waiting time and travel time incurred by BIZERBA. This record shall contain a list of the incurred work time/waiting time and travel time.

8.7 Remuneration as per 8,2 shall be due at the latest within 14 days following the invoice date providing nothing else has been agreed. Remuneration as per clause 8.4 shall be due upon acceptance or upon payment of an appropriate sum upon partial acceptance within 8 working days.

8.8 The client may set off only those claims which are undisputed by BIZERBA or determined by a final legal judgement.

8.9 The occurrence of a significant deterioration in the pecuniary circumstances of the client, or other circumstances that impair his creditworthiness, shall result in all of BIZERBA's receivables becoming due immediately. In such cases BIZERBA shall also be entitled to render performances only

against advance payment or the lodging of security, and if our demand for this is abortive to rescind the contract.

9. Compensation for damages, liability of BIZERBA

- 9.1 BIZERBA shall be held liable in the event of intent and gross negligence, also on the part of its assistants, in accordance with the statutory provisions. The same shall apply in the event of loss and/or damage arising from injury to life, body or health which is caused by carelessness. In the event of material and financial loss/damage caused by negligence, BIZERBA and its assistants shall be liable only if a significant contractual obligation is breached, but limited in terms of amount to loss/damage that is foreseeable at the time when the contract is concluded and is typical of such contracts; significant contractual obligations are those whose fulfillment shapes the contract and on which the client is entitled to rely.
- 9.2 Contrary to clause 4, BIZERBA is not liable for breaches of not or not entirely correctly communicated safety regulations by the client. In such a case the client shall release BIZERBA from any claims in this regard.
- 9.3 BIZERBA is not liable for the functioning of the entire plant, unless otherwise agreed in writing or if such a service obligation is stipulated expressly in the INSTALLATION DESCRIPTIONS.
- 9.4 BIZERBA is not liable for incorrect conduct of the personnel provided by the client, unless such behavior is a result of an incorrect instruction by BIZERBA.
- 9.5 BIZERBA is not liable for injuries to the property rights of third parties due to a violation of the obligation to cooperate of the client as per clause 4. In such cases the client shall release BIZERBA from any claims, costs and expenses.
- 9.6 The exclusion and limitation of liability shall not apply (i) in those cases where, in the event of defects in the delivered articles, there is liability under the German Product Liability Law (ProdHaftG) for damage to persons or for damage to property affecting privately-used items, (ii) for liability resulting from the assumption of a guarantee for the condition of an article and (iii) on grounds of malicious concealment of a defect.

10. Safeguard Clause

Should any present or future provision of these conditions be or become wholly or partly ineffective, invalid or unenforceable for reasons other than Sections 305-310 BGB, this shall not affect the validity of the remaining provisions of this Contract, unless, taking account of the following provision, the implementation of these conditions is unreasonably harsh for one party. The same shall apply if a loophole requiring rectification manifests itself after the contract has been concluded. The parties shall replace the ineffective, invalid or unenforceable provision or the loophole to be rectified with an effective provision that corresponds to the legal and commercial substance of the ineffective, invalid or unenforceable provision and the overall purpose of these conditions.

If the invalidity of a provision is based on a measure of performance or time (period or date) contained therein, the provision must be agreed with a legally permissible measure that corresponds most closely to the original measure.

The parties are aware of the jurisdiction of the Federal Supreme Court whereby a severability clause merely reverses

the burden of proof. It is, however, the express intention of the parties to maintain the effectiveness of the remaining provisions of the contract under all circumstances and therefore to waive Section 139 BGB as a whole.

11. Applicable law and place of jurisdiction

These conditions shall be governed by the substantive law of the Federal Republic of Germany. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is precluded.

Place of jurisdiction and place of fulfillment shall be the head office of Bizerba. The parties are at liberty to make claims of the respective other party at their general court of jurisdiction.

12. Retention and setoff

The client is not entitled to withhold payments on account of counter-claims that are not based on this contractual relationship, nor to offset with claims disputed by BIZERBA or not yet effectively established.

13. Data processing for own purposes

The client gives his consent to BIZERBA gathering, processing and using his contact data for the purpose of handling the contractual relationship and cultivating the commercial relationships with the client until this is revoked. Contact data comprises the business-related contact information that is made accessible for BIZERBA by the client, especially names, occupational titles, business addresses, business telephone and fax numbers, and e-mail addresses of employees of the client and of third parties.