

Standard Sales Terms of BMC Switzerland AG for business transactions with companies in the EU

1. General information

- a. In these Standard Terms the concept "BMC" designates the company "BMC Switzerland AG" with registered offices in Grenchen, Switzerland.

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- b. In these Standard Terms the concept "Retailer" designates every individual and legal entity with which BMC has entered into legal relations or will enter into such relations, respectively.
- c. In these Standard Terms the concept of "Product" or "Products" designates all movable goods supplied by or to be supplied by BMC and/or the services performed or to be performed by BMC (supply item).
- d. In these Standard Terms the concept of "Model Year" designates all products produced within the same series. The Model Year normally lasts from 1 July through 30 June of the following year.

2. Scope of application

- a. Our supplies, services and offers occur exclusively on the basis of these Terms. The Retailers' contrasting or contrary terms are explicitly rejected. The Terms also apply even when BMC, while aware of the Retailer's contrasting or contrary terms, delivers without reservation. Deviations from these Terms require express prior written consent. Verbal commitments by BMC representatives or other auxiliaries are not binding. This also applies to any waiver of the requirement of written form.
- b. Upon placement of an order via the various ordering channels (telephone, fax, email, B2B retailer portal, etc.) the Retailer agrees to the exclusive application of these Standard Terms to this and all further orders. These Terms shall also apply to all future supplies and services in the framework of a permanent business relationship.
- c. The scope of application of these Standard Terms is limited to contracts with undertakings, legal entities of public law or segregated public-law estates. These Standard Terms are not applicable in commercial intercourse with consumers.
- d. Individual agreements reached in specific cases with the Retailer (including ancillary understandings, supplements and amendments) in any case take precedence over these Standard Terms. For the contents of such agreements a written contract or our written confirmation is definitive.

3. Terms

- a. BMC operates a qualitatively selective distribution system. The criteria for admission of Retailers are the following:
- Qualified specialty retailers (specialist workshops with trained mechanics, a focus on advisory and repair services, attendance at BMC product training courses, settlement of warranty cases)
 - Brand-conforming business premises (shop windows, appropriate store space for presentation of products, opening hours)
 - Financial condition (creditworthiness, minimum order quantities and price stability)
- BMC may at any time check on compliance with these regulations. If the requirements are no longer met by a Retailer, BMC may without citing any additional reasons terminate cooperation.
- b. The Retailer may only offer or sell, or intermediate offer or sale of, Products in conformity with the regulations contained in these Standard Terms or agreed additionally in writing.
- c. The Products are to be properly assembled by the Retailer in accordance with the product manual that comes with

the Product. The Retailer is obliged to properly adapt the Products to the needs of each particular final consumer and to provide the latter with all documentation and spare parts supplied by BMC together with the Product. The Retailer is obliged to exclusively sell Products that are in conformity with the statutory regulations that apply at the Retailer's particular place of sale.

The Retailer is obliged to offer and sell the Products exclusively via the retailer sites approved by BMC and/or via its own website allocated to the Retailer. The sale of a BMC Product to a final consumer always includes personal advice as well as individual configuration of the Product according to the needs of the final consumer. Handover of Products to final consumers consequently always occurs at approved retailer sites. Any offering, selling as well as advertising of the Products by third parties and/or via any other internet site, in particular auction platforms including their indirect market places, is forbidden without prior written approval by BMC.

- e. The Retailer allows BMC to use its name for advertising purposes.
- f. The Retailer is a separate independent dealer and distributes the Products on its own behalf and for its own account. These regulations neither establish any contract of agency, employment contract or corporate relationship. The Retailer has at the termination of the contract relationship no claim to any compensation of any kind (in particular severance or custom compensation).

4. Offer and contract signing

- a. All bids, price lists, etc., are uncommitted and non-binding unless BMC has issued a written statement to another effect. This also applies if BMC transmits a preliminary invoice or comparable declarations at the urging of the Retailer, in particular for the purpose of meeting official requirements.
- b. Information on the properties and uses of the Products, in particular specifications, models, dimensions and weights, prices, etc., contained in catalogues, on internet sites or other documents, constitute non-binding and approximate information unless BMC has declared them to be binding explicitly and in writing. BMC reserves the right to modify specifications without further notification. Specifications do not therefore constitute any agreed information on properties.
- c. BMC may accept orders made through Retailers within two weeks of receipt of the order. The contract comes about upon dispatch of the order confirmation by post or email as well as through fulfilment of the order (delivery).
- d. Upon dispatch of the order confirmation or fulfilment of the order (delivery) by BMC orders may no longer be cancelled.
- e. Contract signing occurs with reservation made for correct and timely incoming delivery by the external BMC suppliers. However, the buyer will be immediately informed about any eventual non-availability of performance. Performance or payments already made by the Retailer will be immediately reimbursed.

5. Sale and delivery conditions, delivery deadlines

- a. BMC agrees annually with its retailers on the sale and delivery conditions applicable for the coming Model Year (here below referred to as "sale conditions" collectively) in written form. The sale conditions are deemed to apply for a Model Year at a time and are not automatically renewed for a change of the Model Year. The present Standard Terms constitute in each case an integral component of the sale conditions.
- b. The sale conditions refer to each particular valid price list for Retailers and final consumers. The price list for Retailers contains neither the statutory value-added tax nor any other taxes, fees or charges. The price list for final consumers constitutes non-binding price recommendations (including statutory VAT).

- c. Delivery costs are invoiced on the basis of annually agreed sale conditions.

- d. Delivery occurs "ex works" from one of the BMC merchandise depots (Incoterms 2010; EXW CH-2540 Grenchen, EXW CH-4448 Läuelfingen or EXW FR-68300 St Louis), from another merchandise depot designated by BMC or from some other place agreed in writing. Risk passes to the Retailer, even when delivery is free of carriage charges, at the latest upon leaving the works.

- e. If more than 20 weeks have passed between signing of the contract and delivery and if BMC has not intentionally caused that period to be exceeded then BMC is entitled to raise the price in accordance with the incurrence of extra production costs, in particular due to increased raw materials prices, after timely notification of the Retailer and prior to delivery of the goods. BMC reserves the right to raise prices in accordance with cost increases that have occurred due to general wage increases or the increase of prices for materials.

- f. Unless otherwise agreed, delivery deadlines announced by BMC are non-binding and only to be considered as approximate. Delivery deadlines start on the date of order confirmation but not before all technical issues have been clarified and the Retailer has met all obligations incumbent upon it, and in particular has made the agreed down payments.

- g. Delivery deadlines are considered met if up until their expiry the item to be delivered has left the works, if dispatch of the goods is not possible without any fault on the part of BMC, and the Retailer has been informed of readiness to ship.

- h. Exceeding of deadlines does not entitle the Retailer to cancel the contract and/or demand damage compensation. If BMC can be held responsible for late delivery or if delivery is impossible then the Retailer's compensation claims are limited in accordance with section 14 of these Standard Terms. If BMC exceeds the delivery deadline for reasons for which it is responsible then BMC comes into delivery arrears if the Retailer at the expiry of the delivery deadline demands delivery within three weeks and BMC lets this deadline pass.

- i. BMC is entitled to make partial deliveries. The corresponding partial invoices must be paid by the Retailer in accordance with the annual sale conditions. The additional transport costs incurred by partial deliveries will be assumed by BMC.

- j. BMC is not obliged to make delivery if the Retailer is in arrears with its payments or if the credit limit granted has been exceeded (see also section 9).

- k. Should delivery of the goods fail due to the Retailer's fault despite two attempts to deliver then BMC may again charge for the delivery costs of each additional attempt to deliver.

- l. Shipping damages and wrong deliveries must be reported to BMC within 48 hours of delivery in writing, failing which BMC does not assume any liability (see also section 14).

6. B2B retailer portal

- a. Use of the B2B retailer portal is restricted to Retailers with signed sale conditions for the current Model Year (see also section 5) inside BMC's direct delivery territory. Access to the retailer portal is an additional service offered to Retailers which may be withdrawn by BMC at any time and without citing any reasons.

- b. Presentation of the Products on the retailer portal does not constitute any legally binding offer but an invitation to order (see also section 4).

- c. Products only placed in the "shopping basket" are not deemed to be a binding order. Only upon clicking the icon for "Order" in the final step of the checkout process have the Products listed in the shopping basket been ordered in a binding manner.

- d. Immediately upon receipt of the order, BMC confirms receipt of the order by email (confirmation of receipt). The contract comes about upon dispatch of the order con-

firmation by post or by email but also by fulfilment of the order (delivery) by BMC.

- e. Presentation of the retailer prices is the equivalent of the particular applicable retailer price list and contains neither statutory value-added tax nor any other taxes, fees or charges. Discounts and delivery costs in accordance with the sale conditions agreed individually with the Retailer (see section 5) as well as any eventual value-added tax, other taxes, fees and charges are calculated and displayed during the checkout process.
- f. Products ordered as test products or for the Retailer's own use must in each case be recorded as a separate online order and provided with notations as "test bike" or "own use" as reasons for delivery during the checkout process. The special discount according to the annual sale conditions for such orders is not displayed during the checkout process. It is confirmed only after a manual order check by BMC with an eventual order confirmation then sent to the Retailer.

7. Data privacy

- a. BMC puts great stress on the security and privacy of its Retailers' data. BMC's detailed data privacy statement can be inspected in the following places:
 - BMC website:
bmc-switzerland.com/privacy
 - BMC B2B retailer portal:
b2b.bmc-switzerland.com/privacy
- b. All business transactions and the information required for them (such as addresses, bank accounts, contract texts, etc.) are electronically stored and processed in connection with their intended use. Storage, processing and any eventual onward transmission of data to third parties are governed by the data privacy statement referred to above.
- c. Upon initial use (first login) of the B2B retailer portal the Retailer in addition agrees to having business data relevant for the B2B retailer portal being transmitted over the internet in encrypted form.
- d. The access data to the B2B retailer portal made available to the Retailer by BMC (user-name and password) are to be treated as confidential business secrets as defined in section 16 and may not be passed on to third parties (apart from the Retailer's employees directly concerned by the order). The employees must be put under a corresponding obligation and the password must be changed each time an employee leaves. In case of breach of this, BMC reserves the right to demand damage compensation.

8. Obligation to examine and complain

- a. The Retailer must immediately upon delivery check that the Products are free of flaws. Obvious flaws must be reported to BMC in writing at the latest within a peremptory deadline of 14 days after delivery of the product (passing of risk). Upon demand, BMC is to be provided with documentation material, particularly photographs.
- b. If the Retailer fails to report this then the goods are deemed to have been accepted unless it be a question of a flaw that was not recognisable upon inspection. If such a flaw should later become evident, notification must be made immediately, at the latest within a peremptory deadline of five days of discovery, failing which the goods are deemed to be approved in regard to this flaw.
- c. The Retailer is obliged to bear BMC's costs in connection with a flaw complaint undertaken without justification.

9. Payment terms

- a. The payment deadlines and conditions are set in the annual agreed sale conditions (see section 5). Unless otherwise emerges from the order confirmation, prices are deemed to be "ex works," in particular exclusive of freight, customs, indirect import charges and packing as well as exclusive of value-added tax.
- b. If the Retailer fails to pay the invoice when due, it goes into arrears without any further notice.
- c. In case of payment arrears, BMC reserves the right to charge late payment interest of 1.5% on all outstanding invoices for every month begun in arrears.
- d. BMC is contrary to regulations to the contrary entitled to first credit the Retailer's payments to the latter's older debts. If costs and interest have been incurred, BMC may first credit payment against costs, then against interest and lastly against the principal.
- e. No set-off against the Retailer's counter-claims is allowed.
- f. Collection charges will be billed to the Retailer.
- g. Payment is only deemed to have been made when the amount is definitely available for BMC to use.

10. Cancellation

- a. Should the Retailer breach the provisions of these Standard Terms then BMC will issue the Retailer a warning and, by setting a deadline of 30 days demand that contractual conditions or compliance with contractual obligations be restored. If the Retailer fails to comply with this demand then BMC is entitled to immediate withdrawal from all outstanding purchase contracts. A warning is not necessary if it appears to be in vain in advance or if the Retailer breaches the obligations under paragraph 3 (Terms), paragraph 11 (Retained title) or paragraph 15 (Intellectual property rights).
- b. BMC is entitled to withdraw from all contracts signed between BMC and the Retailer and not yet completely fulfilled by both parties, in particular to cancel all outstanding orders, and to declare payment immediately due for all amounts owed to BMC, if
 - bankruptcy and composition proceedings are filed for or initiated against the Retailer's as-sets,
 - the Retailer is liquidated (if it is a question of a legal entity) or has ended its business operations,
 - preferred shares, common shares or other investment securities allowing for control of the retail business are transferred to third parties (change of control).

11. Retained title

- a. The Products delivered remain the exclusive property of BMC pending complete payment of all claims under the business relationship as well as all older claims pre-existing this contract signing, including all claims under subsequent orders, follow-up orders and spare parts orders (including all interest and costs). This also applies in the event that payment deferrals have been granted. The Retailer grants BMC the unreserved authorisation, according to its assessment, to undertake registration in the relevant retained title register without the Retailer's cooperation and consent.
- b. Prior to passing of title the Retailer must handle the BMC Products carefully and adequately insure them at their replacement value against fire, leakage and theft damages. Any hypothecation, collateralisation, processing or conversion of Products with retained title is not allowed without the prior, written consent of BMC. The Retailer must immediately notify BMC in writing in case of garnishment or any other third-party interventions.
- c. For actions of the Retailer in breach of the contract BMC is entitled to repossess the Products delivered. Repossession as well as garnishment of delivered Products do not constitute with-drawal from the contract provided BMC does not explicitly declare this.
- d. Provided it is not in arrears, the Retailer is entitled to resell the delivered Products in its normal course of business. The Retailer by way of precaution assigns to BMC claims in their entirety (including value-added tax) which it acquires in relation to third parties on the basis of resale or for any other legal reason in connection with the Products under retained title. BMC accepts such assignment. BMC authorises the Retailer to collect the claims assigned to BMC on its own be-half. BMC reserves the right to revoke this collection authorisation if the Retailer does not properly discharge its payment obligations. If BMC revokes the collection authorisation the Retailer must make the assigned claims and their debtors known to BMC, hand over all documents relating thereto as well as to notify the debtor of the assignment.
- e. For exercise of these rights with support in this article and repossession of Products the Retailer consents to giving BMC, its employees or vicarious agents as well as all motor vehicles which BMC considers necessary in this context unrestricted access at any time to the Retailer's business premises and/or other venues where the Products are located.
- f. These provisions do not prevent passing of risks of loss and damage of the Products sold as well as damages they may cause, upon delivery to the final consumer.

12. Repossession of Products

- a. If BMC repossesses Products delivered to the Retailer under the provisions of these Standard Terms, in particular in cases according to section 10 (Cancellation) and section 11 (Retained title) then the Retailer, with the exclusion of further rights, receives credit according to the following provisions:
 - Products still in the original packing from the current Model Year in the amount of the net sale price minus 15%, from the previous Model Year minus 30%,
 - Products no longer in the original packing from the current Model Year in the amount of the net sale price minus 25%, from the previous Model Year minus 40%,

- Products older than the previous Model Year at a credit set according to BMC's assessment, however at most at the net sale price minus 50%.
- b. Costs incurred by BMC for repossession of Products (shipment, etc.) are charged to the Retailer.

13. Warranty

- a. In case of a de facto existing flaw, reported properly and on time and acknowledged by BMC, BMC will at its option subsequently improve or replace the flawed Products. If subsequent improvement fails, the Retailer is entitled to demand price reduction or cancellation of the contract. The Retailer may in the framework of statutory regulations only assert damage compensation claims if the flaw has been maliciously concealed or if BMC has by way of exception assumed a special warranty. Damage compensation claims for flaws in the item supplied going beyond this are barred unless one of the exception criteria under section 14 c. and d. obtains.
- b. The Retailer's flaw claims are time-barred after 12 months reckoned from the passing of risk. This time-bar applies to all kinds of claims.
- c. Modifications of the technical specifications (e.g. components) as well as of form and colour do not constitute physical flaws (see also section 4). The Retailer is obliged to assert any eventual claims with consideration given to the terms in accordance with section 8 (Obligation to examine and complain).
- d. The Retailer is not entitled to warranty claims if a flaw is due to its own improper, incorrect or negligent storage, transport, handling, maintenance, repair, damaging or modification of the Product. The same applies if the physical flaw is due to wear or the fact that the Retailer has combined the Product with parts that were not purchased from or approved by BMC. Modifications to the bicycle frame entail complete barring of any warranty.
- e. The warranty provisions for final consumers may at any time be inspected on the BMC website under bmc-switzerland.com/warranty. The afore-cited warranty provisions are not applicable to the contractual relationship with the Retailer.

14. Liability and support in product liability cases

- a. With reservation made for the following provisions, the statutory liability rules apply including those in the Product Liability Act. BMC's liability is limited or opted out to the extent that is statutorily allowed. Damage compensation claims and expense reimbursement claims by the Retailer of any kind, and for whatever legal reasons (hereinafter referred to collectively as "damage compensation claims") are barred.
- b. BMC is not liable for consequential damages such as lost profits, losses and consequential costs, loss of a contract or savings or loss due to business disruption or stoppage or other of the Retailer's financial damages.
- c. Where liability is barred or limited, this will also apply to personal liability of BMC's employees, personnel, sales representatives or agents.
- d. In any case, BMC is only liable for compensation for damages or losses up to the extent of the invoice amount the Retailer has paid for the Products that caused the damage or loss. BMC's liability is barred to the extent that the Retailer has combined Products with parts not purchased from or approved by BMC. Modifications to the bicycle frame entail complete barring of BMC's liability.
- e. The Retailer may not modify Products in regard to their safety-relevant aspects. It may, in particular, not modify or remove existing warnings about dangers due to improper use. If this obligation is breached, the Retailer must hold BMC harmless against third-party product liability claims in their internal relationship.
- f. If BMC is obliged to initiate measures, in particular for a product warning or a product recall, then the Retailer must make best efforts to provide its support.
- g. The Retailer must inform BMC immediately in written form about risks it becomes aware of.

15. Intellectual property rights

- a. Intellectual property rights and all other rights to brand names, trademarks, logos, contents, images, photos, videos and other files in catalogues, brochures, websites, data media, down-loads, etc. are the exclusive property of BMC or the specifically named rights holders. For reproduction or reuse of all possible elements, unless explicitly defined otherwise, the Retailer must in advance obtain prior written consent of the holders of intellectual property rights.
- b. For the duration of the contract, selected contents from

the BMC media database will be made available to the Retailer to the extent that this is necessary for contractually proper use. These contents may, unless explicitly cited otherwise, be used for advertising purposes. This also includes use of the BMC logo which must be used in conformity with the currently valid corporate identity guidelines. Any use whatsoever going beyond this is only permitted for the Retailer with prior written consent.

- c. The Retailer is obliged to desist immediately with use of the elements cited above if challenged by BMC to do so, and in any case as soon as the legal relationship between BMC and the Retailer ends.

16. Confidentiality, secrecy

- a. The Retailer is obliged to treat all non-disclosed commercial and/or technical information it becomes aware of through its business relations with BMC (to wit, the sales conditions as well) as confidential business secrets. These confidential business secrets may not be disclosed to third parties, in particular employees of competing firms as well (prohibition on disclosure). Excepted are such third parties as are in an employed relationship to the Retailer and who in connection with the discharge of their tasks are necessarily dependent upon having the correspond-

ing information, provided that they have also been put under an obligation to secrecy to the same extent in writing by the Retailer. In general, confidential business secrets may not be used and/or commercialised outside of the contractual purpose. These obligations (prohibition on use and commercialisation) also apply post-contractually.

17. Amendments to the Standard Terms

- a. The Standard Terms apply in the version current at the time of contract signing. Ex post facto amendments or supplements to these Standard Terms become a component part of the contract if the Retailer does not reject them in writing within 30 days of learning of the amended provisions. All amendments and supplements to these Standard Terms as well as the waiver of their applicability require written form. This also applies in regard to any possible waiver of the requirement of written form.

18. Applicable law and proper forum

- a. This agreement is exclusively subject to substantive Swiss law with the provisions of private international law expressly barred (only article 116 IPRG, which explicitly allows for explicit choice of law such as the present clause,

is to be left unaffected by this exclusion). Application of the United Nations Convention on the International Sale of Goods (CISG) is barred.

- b. The ordinary courts of CH-2540 Grenchen, Switzerland, have exclusive jurisdiction for all disputes.

19. Severability clause

- a. Should one or more provisions of these Standard Terms be or become fully or partially without legal effect or unenforceable the legal effect of the remaining provisions will not be impaired. In lieu of the provision without legal effect a regulation will be deemed to have been agreed from the very beginning that most closely approximates commercially the regulation that the contracting parties intended. The same applies analogously to any gaps in these Standard Terms.

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Place, date

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Signature/seal of licensed dealer