

General Terms and Conditions (GTC)

(The currently valid General Terms and Conditions are available on the Internet.)



1. Scope

These General Terms and Conditions are applicable for deliveries and services of BELIMO SOUTHERN AFRICA (PTY) LTD, (hereinafter "BELIMO") to the client. If the client requests a delivery or service abroad, the contract will be concluded with the local BELIMO company in that country or with a BELIMO company named by BELIMO in the order confirmation. In such case, the General Terms and Conditions of the BELIMO company appointed in the order confirmation will be applicable. In case our delivery includes Software and accompanying documentation, the terms of the license agreement are applicable in addition to these General Terms and Conditions. However, in case of any conflict between the two documents, the license agreement shall prevail.

2. Conclusion of the contract

The contract is deemed to be concluded upon receipt of an order confirmation by the client or, upon absence of such confirmation, upon the segregation of the ordered products by BELIMO. All catalogues, brochures and publications on the Internet are considered to be an invitation to offer and are not binding for BELIMO.

Modifications or additions to these General Terms and Conditions or to the contract are not valid without written approval by BELIMO. Orders that deviate from the specifications published by BELIMO or contain additions or modifications made by the client will only be effective if they have been expressly approved by BELIMO with a written order confirmation.

3. Cancellation of the contract

Orders of products according to catalogue (standard products) may be cancelled by the client until the segregation of the ordered products by BELIMO provided that BELIMO has received the statement of cancellation prior to the time of segregation.

Orders of customers' products (special designs etc.) may be cancelled only up to 4 hours after receipt of the order by BELIMO. In that case, a service charge of 10% of the net order amount will be invoiced to the client. In case of customized products or configured actuators, a service charge of 20% of the net order amount will be invoiced to the client.

4. Prices

If not expressly specified otherwise, all price information is net, excluding VAT.

The standard packaging of the ordered products is included in the net price. All other costs, such as for transport, insurance, taxes, customs duties as well as export, import or other necessary approvals will be invoiced as additional charges. The net price does not include any additional services performed by BELIMO, such as installation, commissioning and compilation of diagrams etc. BELIMO reserves the right to change prices at any time until the conclusion of the contract.

5. Delivery conditions

All times, dates and delivery deadlines are considered non-binding, unless their binding nature has been expressly agreed in writing. Binding delivery deadlines and dates that have been agreed upon in writing are met when the product is made available in the distributing warehouse before the corresponding dates have passed. If BELIMO has a delay in delivery, it is assumed that the client continues to demand the delivery. Compensation for late delivery or for replacement is excluded.

If not otherwise indicated on the order confirmation, delivery of the Goods shall be made in accordance with Incoterms® CIP (CIP = Carriage and Insurance Paid To)

BELIMO reserves the right not to deliver the ordered products if they are unavailable; in this case, BELIMO will immediately notify the client of

the non-availability and, if necessary, reimburse any payment already made.

6. Payment conditions

BELIMO Invoices must be paid in full within 30 days after date of Statement. All overdue sums shall bear interest up to the maximum interest allowed under the Limitation and Disclosures of Finance Charges Act No. 73 of 1968 or any act replacing it from the date upon which payment became due. If the client is in delay, BELIMO reserves the right to withhold further deliveries. The client is not entitled to offset outstanding accounts from BELIMO with any counterclaims.

7. Application, installation and use of BELIMO products

BELIMO products are intended for professional use only. BELIMO products may only be installed and replaced by skilled qualified personnel. BELIMO products must be used in accordance with the specifications of the respective currently valid data and assembly sheet. The use of Belimo Cloud Services is subject to the "Terms of Use for Belimo Cloud Services" as amended from time to time.

8. Specifications

Except when otherwise expressly stipulated, the information published by BELIMO in text or picture form (e.g. illustrations or drawings) in catalogues, brochures, websites, data and assembly sheets or other publications conclusively defines the specific characteristics of the goods delivered by BELIMO and their application possibilities and does not represent any guarantee for durability or specific characteristics. The specific characteristics of the delivered products can deviate from that of images or samples in respect to material, colour or shape. BELIMO does not accept any responsibility for the performance or fitness of products for a particular purpose.

The specifications communicated by BELIMO are only to be regarded as a guideline. BELIMO reserves the right to change the communicated product specifications or to deliver corresponding products from third-party suppliers in place of the ordered products.

9. Reservation of title

The title of supplied products remains with BELIMO until the client has fully paid all invoices.

10. Passing of risk

Benefit and risk with regard to the products purchased pass to the client in accordance with agreed Incoterms® 2020.

11. Redemption of products

BELIMO may, upon prior agreement, redeem products according to catalogue (standard products) provided that these products are still contained in the product range, virgin, i.e. not older than max. 6 months, unused, and originally packed at the time of return. BELIMO does not have any duty of redemption. Redemption of customers' products (special designs, Designed to Order, configured actuators), Openline-products or products that have been procured on client's specific demand is excluded.

The return of products according to catalogue shall be made enclosing a copy of the invoice and stating the reason for the return, free of all charges to the address of BELIMO SOUTHERN AFRICA (PTY) LTD, 11 Third Street, Southdale, Johannesburg, South Africa.

From the credit as agreed with the client, a service charge of at least 20% of the net catalogue price will be deducted. A payment of the credit in cash is excluded. It can only be credited against future orders.

12. Duty of examination

The client shall examine all products for defects within 5 working days of receipt. Any defects are to be reported to BELIMO immediately in writing; the product will otherwise be deemed to be approved. Hidden defects must be reported in writing within 5 working days after they are discovered.

13. Warranty

With its warranty, BELIMO guarantees during the warranty period in accordance with this clause 13, that the delivered products meet the specifications that are explicitly listed on the corresponding data sheets. For the rest, any warranty is excluded as far as permitted by law.

In particular, no warranty is given for damage resulting from or partly caused by the client or by third parties acting within the scope of responsibility of the client when

- Products are used in areas that are not specified in the data and assembly sheets, especially in aircraft and any other airborne means of transport;
- Products are used without observing the laws, official regulations or the instructions of BELIMO (especially regarding installation, commissioning, operating regulations and information on the data and assembly sheets);
- Products are used under special conditions, especially under the continuous influence of aggressive chemicals, gases or liquids or outside of the permissible operating parameters or conditions for use;
- Products are assembled, handled or installed incorrectly or without due care or not according to the respective authoritative state-of-the-art or are not used or installed by skilled qualified personnel;
- Products are modified or repaired without prior written approval of BELIMO;
- Products become worn out as a result of inappropriate or unintended use or excessive stress;
- Products are stored inappropriately; or
- The client or third parties are responsible for damage.

Belimo also provides no warranty for normal wear and tear, including all types of corrosion, operational or environmental wear and tear and the like, as long as this is not due to defects in materials or workmanship.

For Openline-products further limitations of liability according to the applicable framework agreement, concluded between BELIMO and the client, will apply.

The client is liable for actions or omissions of auxiliary personnel as if these were his own actions.

The warranty period is five years from the date of manufacture for BELIMO products. The warranty period is two years from the date of delivery for Openline-Products. The warranty period for products that have not been manufactured by BELIMO (trade products) can be derived from the order confirmation. Trade products are specified as such, either by the name and/or by the logo of the manufacturer. The warranty period for trade products is generally one year from the date of delivery, in exceptional cases two years from the date of delivery.

The warranty period starts at the time of manufacture or delivery of the product, respectively, without requiring acceptance from or testing by the client. The client is obliged to immediately initiate all suitable measures to minimise damage. If a timely report has been made in accordance with Section 12 above, BELIMO is obliged either to replace defective products with products that are equal or equivalent, to have them repaired either by BELIMO or third parties at BELIMO's expense or to issue the client a credit note in the amount of the net price paid for the defective product. BELIMO will decide which of these measures is taken.

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The warranty period does not restart from the beginning for replaced products.

BELIMO can require the client to replace particular defective products or parts of products in a system to prevent damage, whereby reasonable client expenditures in this context that are approved in advance in writing by BELIMO will be reimbursed by BELIMO.

14. Limitation of liability

The liability of BELIMO is defined conclusively under Section 13. Any other claims of the client towards BELIMO, irrespective of the legal basis, including but not limited to price reduction or rescission, are excluded and waived expressly herewith.

Client does not have any title to claim for damage which does not occur on the products themselves as well as for compensation for such claims from the client's clients or third parties. In particular, BELIMO does not accept any liability for costs incurred in connection with a replacement (e.g. transport, dismantling, assembly, re-commissioning and associated clarifications), costs for determining the causes of damage, for expert opinions or indirect or consequential damage (including damage resulting from defects) of any kind, such as loss of use, downtimes, loss of profit or returns etc. and for damages caused by recall actions, unless they have been caused by BELIMO intentionally or due to gross negligence. The extent to which BELIMO's liability is excluded or limited, such exclusion or limitation also applies to the personal liability of their employees, staff, representatives and vicarious agents.

15. Indemnification

Upon BELIMO's first request, the client shall indemnify and hold harmless BELIMO in full from any third party claim in conjunction with the events listed under Section 13. This also applies to claims in connection with product liability.

16. Force majeure

Neither BELIMO nor the client accepts liability for damage of any kind if obstacles occur which they are unable to prevent in spite of all due care, irrespective of whether these occur at BELIMO, the client or a third party. Such obstacles are, for example, epidemics, pandemics, mobilisation, war, revolts, severe interruptions of operations, accidents, labour disputes, delayed or faulty delivery of the required raw materials, semi-finished or finished goods, non-availability of important work pieces, magisterial injunctions or omissions, embargos, export or import restrictions, acts of God or any other circumstances which are, to a large extent, beyond the control of BELIMO or the client. Payments, however, may not be retained or delayed with reference to such circumstances. In such cases, both parties shall, without delay, undertake all effective measures which can be expected of them to prevent damage, or if damage occurs, to minimise the degree of this damage as far as possible.

17. Resale

If the product is resold, the client must impose at least the same limitations of warranty restrictions upon the buyer.

18. Privacy policy

BELIMO places great value on the implementation of lawful data processing to protect your personal data. BELIMO is obliged to process your personal data in accordance with current legislation. We are dependent on the services of third parties for the provision of our services. These third parties will only process your data in connection with the services agreed with BELIMO, will ensure the same level of data protection as BELIMO, and will not pass on your data to other

third parties without your agreement. When processing your data and transferring your data to third parties, BELIMO will ensure that an appropriate level of data protection is guaranteed and that appropriate organisational and technical measures are implemented to protect your data. More detailed information on our data protection guidelines is available from the following Internet address: www.belimo.com/privacy.

19. Modifications

BELIMO reserves the right to modify these General Terms and Conditions at any time.

20. Severability clause

In the event that one or more of the aforementioned provisions should be or become invalid, the validity of the remaining provisions shall not be affected thereby.

21. Applicable law and jurisdiction

This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

Subject to clause 22 the parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg in any dispute arising from or in connection with any transaction between BELIMO and the client.

22. Dispute Resolution

In the event of there being any dispute or difference between the BELIMO and the client ("the Parties") arising out of these terms and/or any transaction, the Parties shall be entitled but not obliged to require that the dispute be resolved by arbitration in Sandton, Johannesburg in accordance with the Arbitration Foundation of Southern Africa ("AFSA") rules, which arbitration shall be administered by AFSA.

Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the Parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any Party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the Parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the Parties to the dispute.

Any Party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.

Nothing herein contained shall be deemed to prevent or prohibit a Party to arbitration from applying to and appropriate court for urgent relief or for judgment in relation to a liquidated claim.

Any arbitration in terms of this clause 22 (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.

This clause 22 will continue to be binding on the Parties notwithstanding any termination or cancellation of the agreement and/or transaction between the Parties.