

Terms of Use for the CustomerCenter of BAUER Maschinen GmbH



Date: 15.02.2023

A. Object and Scope of the Terms of Use for the CustomerCenter of BAUER Maschinen GmbH

1. BAUER Maschinen GmbH, Schrobenhausen, Germany ("**Bauer**") provides on its website at www.bauer.de the CustomerCenter including the subdomains belonging to the CustomerCenter (collectively "**CustomerCenter**") the content and functionalities offered therein for use. These "Terms of Use for the CustomerCenter of BAUER Maschinen GmbH" ("**Terms of Use**") apply exclusively for use of the CustomerCenter. Any deviating, contradictory or supplementary General Terms and Conditions of the User only apply insofar as Bauer has expressly agreed to them in writing.
2. By using the CustomerCenter, the Terms of Use are accepted without reservation. If the Terms of Use are not accepted, the CustomerCenter may not be used.
3. Unless agreed otherwise or provided for in these Terms of Use, any Special Terms of Use shall take precedence over the General Terms of Use.
4. The Terms of Use also apply to modifications and new versions of the CustomerCenter.
5. Bauer reserves the right to change the Terms of Use.
6. The use of the CustomerCenter, including registration, login and access, is only permitted to Users who are entrepreneurs or who use the CustomerCenter for and on behalf of their entrepreneur (collectively "**User**"). An entrepreneur is a natural or legal person or a partnership with legal capacity that acts in the exercise of its commercial or independent professional activity ("**Entrepreneur**").

B. General Terms of Use for the CustomerCenter

1. Registration and login; access to the CustomerCenter

- 1.1 To use the CustomerCenter, the User is required to carry out one-time registration free of charge. In order to register, in addition to the entry of data, the User must also agree to the Terms of Use and Data Privacy Policy. After registration and review, a User account is set up and activated for the User. After successful registration and activation of the User account, a User contract is established between Bauer and the User for the use of the CustomerCenter based on the Terms of Use ("**User Contract**").
- 1.2 All data and other information collected during registration must be provided completely and correctly; Bauer is entitled to review this data for completeness and plausibility. The registration of a User as well as subsequent modification of data and other information may only be carried out by the respective User. The User is obliged to keep the data and other information collected during registration up to date. If this information changes, the User must update it promptly.

- 1.3 The User is granted access to the CustomerCenter after submitting the individual access details (personal business email address and personal password), registering as a User and after Bauer has set up the User account and successfully reviewed the right of access.

2. Right of use

- 2.1 Bauer is the owner or licensee of all intellectual property in the CustomerCenter as well as its content and functions ("**content**"). The use of the CustomerCenter and its content is only permitted in accordance with the Terms of Use. In this regard, Bauer grants the User a non-exclusive, non-transferable right to use the content, which right may be revoked at any time and is limited to the duration of the User Contract. Any use exceeding this is not permitted.
- 2.2 Unless otherwise provided for in these Terms of Use, it is in particular not permitted to edit, modify, adapt, translate the CustomerCenter and its content or to create and/or use works derived therefrom. Furthermore, the User is prohibited from using the CustomerCenter in violation of the terms of use or legal provisions, from circumventing protective mechanisms or taking measures that could lead to a disruption or other impairment of the CustomerCenter. In particular, the User must refrain from any actions that lead to an excessive load on the CustomerCenter.

3. Confidentiality

- 3.1 The User is obliged to keep the individual access details confidential and to protect it from access by third parties.
- 3.2 If the User suspects or has knowledge that third parties are aware of the individual access details, the User shall inform Bauer thereof and change the individual access details without undue delay.

4. Non-remuneration

- 4.1 Unless otherwise agreed, Bauer provides the use of the CustomerCenter free of charge.
- 4.2 Any costs incurred for the use of the mobile network or fixed network are based on the rates of the User's telecommunications provider and are not reimbursed by Bauer.

5. Security; content

- 5.1 A stable internet connection is required for the use of the CustomerCenter. The User is responsible for providing this.
- 5.2 The User acknowledges and accepts that the availability of the CustomerCenter may be restricted or temporarily excluded in particular due to disruptions in network or phone connections, due to force majeure, due to necessary repair and maintenance work for smooth operation or enhancement of the CustomerCenter, due to technical problems, high levels of data traffic in the internet, or infrastructure breakdowns.

- 5.3 It is not possible to guarantee complete security of data when transmitting data over the internet. Bauer is therefore unable to guarantee that the data transmitted or called up by the User is secured against third-party retrieval. Any retrieval of data from the CustomerCenter and any transmission of data to the CustomerCenter shall be at the sole risk of the User.
- 5.4 Bauer is not liable for the accuracy and completeness of the content or its suitability for any specific purpose.
- 5.5 The content is not subject to regular review by Bauer.
- 5.6 The liability provisions according to Clause 8 remain unaffected.
- 6. Right of modification**
- Bauer is entitled to modify, further develop, or partially/fully delete content in the CustomerCenter at any time.
- 7. Blocking access and use; deletion of the User account**
- 7.1 Unless otherwise provided for in these Terms of Use, Bauer reserves the right to block a User's access to the CustomerCenter and/or delete the User account at any time.
- 7.2 Bauer is particularly entitled to block access to the CustomerCenter at any time without prior announcement and/or delete the User account if sufficient grounds exist. Sufficient grounds are deemed to exist particularly if the User has provided incorrect information upon registration, failed to promptly update the information after a change, if the User has transferred the User account to another person or provides access thereto to third parties, caused damage to Bauer, in the course of use violated applicable law and regulations, governmental orders, guidelines, public morality or provisions of these Terms of Use, infringed on third-party rights, or if Bauer terminates the CustomerCenter, modifies the CustomerCenter, or replaces it with a new application in such a way that a new registration of the User is required in Bauer's view.
- 7.3 A User with blocked access or a deleted User account may not use the CustomerCenter via a different means of access, another existing User account or a new User account.
- 8. Liability**
- 8.1 Subject to Clause 8.2 below, liability is excluded for any data loss by the User is excluded. The User is recommended to make backup copies of the data on its own.
- 8.2 Bauer shall be liable
- in the event of malice, wilful intent or gross negligence,
 - for culpably caused damages due to injury of life, limb or health,
 - in accordance with the provisions of the Product Liability Act,
 - in the event of the assumption of a guarantee to the extent thereof, and
 - for slightly negligent breach of a duty that must be fulfilled in order to allow the proper performance of the User contract, and for which the User may regularly rely on fulfilment (known as cardinal duties); however,
- the amount of liability is restricted to the foreseeable and typical damages for this type of contract at the time the User contract was concluded. Such claims of the User shall become statute-barred after 12 months. Otherwise, Bauer's liability towards the User is excluded.
- 8.3 The provisions of Clauses 8.1 and 8.2 also apply in favour of the legal representatives, performing agents and vicarious agents of Bauer.
- 9. Release from liability**
- 9.1 The User is obliged to indemnify and hold Bauer harmless from all third-party claims insofar as these claims are based on culpable violation of the Terms of Use, property rights or other rights of third parties by the User.
- 9.2 Any liability of the User beyond the scope of this Clause 9 remains unaffected.
- 10. Links to external websites, interfaces**
- 10.1 Insofar as content in the CustomerCenter contains links ("links") to external websites of third parties ("external websites"), Bauer shall not assume any liability for the content of such external websites. These external websites are subject to the liability of their respective operators. Bauer has no influence on the current and future design of the external websites and their design and content ("external content"). Placing links does not mean that Bauer assumes responsibility for the external websites or external content. If the User accesses external websites via links, this shall be done subject to the terms of the external website operator at the sole responsibility and risk of the User.
- 10.2 If the User is granted the option in the CustomerCenter of establishing interfaces with its own databases or third-party databases, this shall be done at the sole responsibility and risk of the User.
- 11. Data protection**
- The protection of personal data is very important to Bauer. The Bauer Privacy Policy contains extensive notices and information about data protection (accessible at www.bauer.de).
- 12. Duration**
- The User contract commences after successful registration, with activation of the User account, and runs for an indefinite period. Unless otherwise agreed, it may be terminated by the User at any time without indicating reasons and by Bauer with four (4) weeks prior notice. The right of either party to extraordinary termination of the User contract for good cause remains unaffected. Bauer's right to block access to the CustomerCenter or justified deletion of the User account also remains unaffected. Upon deletion of the User account, the User contract shall also terminate.
- 13. Final provisions**
- 13.1 The place of fulfilment is Schrobenhausen, Germany.
- 13.2 The User contract as well as associated rights and duties may not be assigned by any party or transferred to third parties without the prior written consent of the other party.
- 13.3 These Terms of Use are exclusively subject to the laws of the Federal Republic of Germany, to the exclusion of the regulations of German international private laws and to

the exclusion of the UN Convention on the International Sale of Goods from 11 April 1980 (CISG).

- 13.4 The exclusive place of jurisdiction for disputes arising from these Terms of Use is Schrobenhausen, Germany. However, Bauer is also entitled to file a suit at any other general or particular place of jurisdiction.
- 13.5 If a provision of these Terms of Use should be or become invalid, the validity of the remaining provisions will remain unaffected. Insofar as individual provisions are invalid, the legal regulations apply.

C. Special Terms of Use for the CustomerCenter - Bauer Geräte Management System of BAUER Maschinen GmbH (WEB-BGM)

1. Object and scope

- 1.1 The "Special Terms of Use for the CustomerCenter - Bauer Geräte Management System of BAUER Maschinen GmbH" ("**Terms of Use WEB-BGM**") apply for the use of the Bauer Geräte Management System ("**WEB-BGM**") in the Bauer CustomerCenter.
- 1.2 Any deviating, contradictory or supplementary General Terms and Conditions of the User or third parties only apply insofar as Bauer has expressly agreed to them in writing.
- 1.3 Use of the WEB-BGM is exclusively permitted for Users who are entrepreneurs or who use the WEB-BGM for and on behalf of their entrepreneur (hereinafter referred to together as "**Users**"). An entrepreneur is a natural or legal person or a partnership with legal capacity that acts in the exercise of its commercial or independent professional activity ("**Entrepreneur**").
- 1.4 The use of the WEB-BGM is - depending on the agreed type of access pursuant to section 3.3 – either free of charge or against payment in accordance with the applicable WEB-BGM price list of Bauer.

2. Description WEB-BGM; right of access

- 2.1 WEB-BGM can provide information on the current status of a device by using satellite data and network technologies from the mobile network sector. Depending on the agreed type of access, this gives the User the opportunity to access more detailed information about construction process, system diagnostics, the operating and maintenance status and the location of the equipment.
- 2.2 By successfully registering for the CustomerCenter, the User is granted access to the WEB-BGM.

3. Content of WEB-BGM services; exclusion from services

- 3.1 Subject to Clause 3.2., equipment data is provided to the User via the WEB-BGM ("**Services**"). The WEB-BGM does not carry out analysis of the data and this is therefore not part of the services.
- 3.2 The provision of equipment data in WEB-BGM requires a separate agreement ("**Agreement**"), for example in the purchase agreement for the relevant device or a teleservice agreement.
- 3.3 In the WEB-BGM, different access types with different functional scope are available for selection for each device. For each device, only one access type can be agreed.

3.4 Bauer reserves the right to further develop or modify the WEB-BGM and its functionalities at any time, in particular to change the scope of functions for access types or provide new access types, the use of which may require a separate agreement. In these cases, the User is entitled to terminate the corresponding agreement without notice in textual form.

3.5 Maintenance and repair measures as well as other service and support services are not subject of the WEB-BGM. A separate agreement is required for these.

3.6 No warranty or liability is accepted that the services will diagnose and communicate existing damages, defects, disruptions and/or messages on the equipment, nor is any warranty or liability accepted for the functionality of the equipment.

3.7 Bauer is not responsible for processing or rectifying any damage, defects and/or malfunctions to the equipment notified by the automated reports or data retrieval, and for taking the necessary measures.

3.8 Operation or control of the equipment by Bauer by way of remote data transmission is not possible.

4. Remote data transmission

4.1 Equipment for remote data transmission

Remote data transmission is carried out using a SIM card installed in the DTR module (hardware) of the respective equipment and via the WEB-BGM. The User must install a suitable browser in its IT systems.

The services are based on data transmission technology, particularly on the data transmission paths as they exist at the time the contract is concluded. Where necessary, these will be adapted to technical progress. Any costs resulting in this context must be paid by the User.

4.2 Data transmission paths

If the User wishes to use its own SIM card, Bauer will check its compatibility with the Bauer hardware and software. For this purpose, the User shall grant Bauer access to the respective equipment. Any additional costs resulting from the use of a different SIM card shall in any case be borne by the User.

4.3 If the mobile network or fixed network is disrupted and Bauer is unable to receive data, or only able to receive data inadequately or if the data quality is insufficient, Bauer shall be released from its obligation to provide Servicew. The same applies in the event of a breakdown of the Bauer server.

4.4 The User is aware that it may not be possible to receive the data in certain countries lacking suitable mobile networks or fixed networks. In these countries, the provision of services is therefore not possible. In this regard, Bauer is released from the provision of Services. Upon User's request, Bauer will provide information about the specific countries affected at the time.

5. Use of data; confidentiality; data protection; data backups

5.1 Confidentiality of Username and password

The User is obliged to keep the individual access details (personal business email address and personal password) for the CustomerCenter confidential and to protect them from access by third parties.

5.2 Use of data; confidentiality; data protection

Bauer is entitled to equip the equipment with a data recording device and to operate this for an unlimited period in order to monitor the technical functionality and technical parameters of the equipment as well as to enable and facilitate the administration of the required maintenance, repair and service work. The User hereby expressly allows Bauer along with its affiliates in the BAUER Group and service partners of Bauer (hereinafter referred to as "**Affiliates**") to call up, download and save the data material generated in this manner at any time, either manually or using appropriate data transmission devices (e.g. via mobile network), as well as to use and analyse this data material within the scope of the following conditions (hereinafter referred to as "**Data processing**"). If the parties have not concluded a corresponding contract (e.g. a teleservice contract), Bauer and the Affiliates are, however, not obliged to do so. If data will be called up manually, the User will grant Bauer, the Affiliates and/or their authorised representative(s) unrestricted access to the equipment.

The processing of data primarily helps Bauer and the Affiliates to review the technical functionality and technical parameters of the equipment, rectify any defects properly, improve service quality and enhance its own product development. In these cases, data processing is exclusively carried out in anonymised form.

Bauer and the Affiliates undertake to treat all construction equipment, construction production and construction service data as strictly confidential, and agree not to transfer this data to third parties or competitors of the User or use it for purposes other than those outlined above. This does not apply insofar as Bauer or the Affiliates are obliged to transfer the data due to statutory regulations or due to governmental or court orders, or if the disclosure of data is necessary to defend their rights and fulfil their obligations (e.g. in a legal dispute).

Insofar as Bauer or the Affiliates also process personal data at the request of the User (e.g. the name of the respective equipment operator) and provide this for the User to read out based on a corresponding contract (e.g. a teleservice agreement), all parties involved undertake to ensure strict compliance with the applicable regulations concerning the protection of personal data and will establish corresponding contractual regulations concerning data processing carried out by Bauer or the Affiliates. The User may withdraw consent to the processing of personal data by Bauer or the Affiliates at any time with future effect.

If the User transfers the equipment to a third party, regardless of the legal grounds and independently of whether the transfer to the third party is legally permitted or not, the User's entrepreneur must ensure through a written agreement with the third party that the third party is obliged to comply with the provisions stipulated in this Clause 5.2.

5.3 Protection against malware

Each party will take appropriate preventive measures according to the current state of the technology to prevent the infiltration of viruses, Trojans, malware etc. into their own software or the software of the other party. If one of the parties is affected by viruses that impair the Services

or that could be transferred to the other party's systems, the other party must be informed in writing without delay; in this case the affected party is responsible for restoring its IT systems as quickly as possible.

6. **Cooperation obligation of the Changes; Right of termination**

6.1 Obligation to provide information concerning technical changes

Changes that the User or owner of the technical environment makes to the equipment and/or the installed browser must be communicated to Bauer in advance - even if the purchase/lease agreement and/or the operating instructions do not prohibit this - and, if necessary, agreed, insofar as they may have an impact on the functionality of the data transmission module or the services. Bauer must be informed of all changes to the operating conditions or technical features of the equipment; this particularly concerns modifications to the equipment control hardware/software, changes in use, changes in the equipment environment, changes in the configuration, and conversions carried out by third parties.

If, as a result of these changes, the Services can no longer be carried out or provided in full, or they can only be provided with a considerably greater effort, Bauer shall be released from its obligation to perform the Services and may terminate the agreement for the provision of equipment data in WEB-BGM ("**Agreement**") for these devices for good cause.

6.2 Commercial changes by Bauer; User's right of termination

Bauer may change the prices for the paid use of WEB-BGM once a year with effect from January of each year. The User shall be notified of the price change sixty (60) calendar days in advance. If the User does not agree to the price change, he may terminate the Agreement affected by the price change in textual form with thirty (30) days prior notice to the end of the calendar year. If no notice of termination is given in due form and time, the Agreement shall be continued under the new terms and conditions.

6.3 The User ensures that the equipment is and remains functionally equipped with the appropriate software and hardware.

7. **Force majeure**

The User and Bauer are not liable for non-fulfilment of their services and obligations if the fulfilment was postponed, impaired, or prevented due to force majeure (e.g. influences of the elements, compliance with orders from responsible government bodies or international authorities, breakdown of facilities or equipment failures, inability to provide equipment, fuel, electricity, materials or transport, strikes, lockouts or other labour disputes, epidemics, pandemics or other circumstances that fall outside the respective party's sphere of control, particularly a breakdown or disruption of the data transmission facilities or the Bauer servers). If a force majeure event or other circumstances of the nature outlined above has occurred, the affected party must promptly inform the other party in textual form and indicate the point in time as well as the nature of the event; the performance of services (obligations of

payment for due invoices are excluded from this) is suspended until the event in question is over.

8. Limitations of liability

- 8.1 Any defect liability claims in the event of defects in the hardware and software supplied by Bauer together with or for the device are subject to the relevant purchase or lease agreement. The Services do not lead to an extension or expansion of the defect liability that may be agreed the respective agreement.
- 8.2 The User must inform Bauer without delay in textual form of any defects he discovers in the hardware and software required for the use of the WEB-BGM.
- 8.3 The responsibility and decision-making authority for equipment and in particular its operation remains with the owner or operator. The Services **cannot** replace a regular physical inspection, maintenance, repair and safety-related review, and inspection of the equipment according to the prescribed intervals, as well as mandatory compliance with safety regulations.
- 8.4 Bauer does not assume any responsibility for the data quality, receipt of data, fault-free condition of the mobile network and fixed network connection, or any server, power or network failure. The same also applies for the timeliness and accuracy of the data read out (e. g. as a consequence of poor network connection or incorrect sensor values/settings on the equipment etc.), as Bauer does not review the collected data, but only reads it out. Bauer therefore does not assume any guarantee or liability that the contractual services will diagnose and communicate all existing damages, defects, disruptions and/or messages on the equipment, and does not assume any warranty or liability for the functionality and fault-free operation of the equipment.
- 8.5 Bauer assumes no liability for the security of equipment data (e.g. in the event of hacker attacks etc.).
- 8.6 Any liability claims therefore only exist in the event of intent, gross negligence on the part of Bauer's executive bodies or management, culpable injury of life, limb and health, for defects that were maliciously concealed or that were guaranteed to be absent, and to the extent which liability exists for personal injury or materials damages on privately used items according to the Product Liability Act.
- 8.7 For culpable violation of cardinal contractual duties, Bauer is also liable for simple negligence, in this case, however, restricted to reasonably foreseeable damage typical for the contract.
- 8.8 The parties assume that the reasonably foreseeable damages typical for the contract will not exceed the annual basic flat rate and Bauer is not liable above this damage threshold.
- 8.9 In addition, no claims for compensation against Bauer shall arise from and in connection with this, in particular no claims for damages, irrespective of the legal grounds, or other rights due to any disadvantages associated with the agreed Services against Bauer. This particularly applies to damages due to loss of data or damage to the equipment.
- 8.10 In particular, Bauer shall not be liable for indirect damages or consequential damages such as loss of production, loss of profit, loss of image or loss of revenue,

unless such consequential damages were caused by intent or gross negligence on the part of Bauer.

- 8.11 To the extent permitted by law, all claims against Bauer shall become statute-barred after twelve (12) months, beginning with the completion of the respective Service.
- 8.12 The provisions of this Clause 8 shall apply equally to Affiliates.

9. Term and termination

- 9.1 Unless otherwise separately agreed, e.g. in a purchase agreement for equipment, the agreement for the provision of equipment data in WEB-BGM ("**Agreement**") runs for that equipment until the end of a given year and is then automatically extended by twelve (12) months unless it is terminated in textual form with thirty (30) calendar days prior notice to the end of a calendar year; in case of a rental equipment, the agreement ends with expiry of the rental contract for the equipment The right to termination without notice for good cause pursuant to Clause 9.2 remains unaffected.
- 9.2 Either party may terminate an Agreement in writing without notice for good cause with immediate effect. Good cause in this sense exists if it would be unreasonable for the terminating party to continue adhering to the Agreement. The parties agree that in particular the following situations are deemed as extraordinary circumstances which justify termination of the Agreement without notice by the other party: Serious breach of contract, if this is not rectified within fourteen (14) calendar days after receipt of the written notification (e.g. payment default), insolvency, receivership, liquidation or another type of settlement between the debtor and creditors to avoid insolvency, force majeure with a duration of more than three (3) months, a change of majority shareholder (change of control) or any circumstances that have a significant impact on the ability of one of the parties to fulfil its obligations under the Agreement.

10. Final provisions

- 10.1 The place of fulfilment is Schrobenhausen, Germany.
- 10.2 The agreement as well as associated rights and duties may not be assigned by any party or transferred to third parties without the prior written consent of the other party.
- 10.3 These Terms of Use for the WEB-BGM are exclusively subject to the laws of the Federal Republic of Germany, to the exclusion of the regulations of German international private laws and to the exclusion of the UN Convention on the International Sale of Goods from 11 April 1980 (CISG).
- 10.4 The exclusive place of jurisdiction for disputes arising from an Agreement or these Terms of Use for the WEB-BGM is Schrobenhausen, Germany. However, Bauer is also entitled to file a suit at any other general or particular place of jurisdiction.
- 10.5 If a provision in an Agreement or these Terms of Use for the WEB-BGM should be or become invalid, the validity of the remaining provisions will remain unaffected. Insofar as individual provisions are invalid, the legal regulations apply.