

## General Terms of Sale and Delivery

Status: 01.2018 / 4 pages

### § 1 Scope of validity

1. These General Terms of Sale and Delivery apply to businesses, legal persons under public law and special entities under public law.  
Our deliveries and services are provided exclusively on the basis of the following terms.
2. Any different or additional business terms, conditions and contractual terms by the partner that are not specifically approved by us shall not apply even if we don't specifically object them. Our remaining silent cannot be constructed as consent.

### § 2 General Terms and Conditions

1. The contracting parties shall immediately confirm all oral covenants in writing in detail.
2. Orders become binding only upon our confirmation of the assignment or the delivery of the order.
3. Data and images contained in brochures and catalogues are industry standard approximations, except if we specifically refer to them as binding.

### § 3 Long-term and drawdown contracts, price adjustment

1. Indefinite term contracts can be terminated to the end of the month with a notice period of 4 weeks.
2. In case of any material changes in a long-term contract (contracts with a term of more than 3 months, and indefinite term contracts) with regard to batch sizes, work costs (salaries), energy, raw materials, preliminary products and/or taxes and duties each contracting party is entitled to claim reasonable adjustment of the prices in consideration of these factors.
3. If no binding order volume is agreed, we base our calculations on the unbinding order volume expected by the partner for a given period (target volume). If the partner draws down less than the target volume, we are entitled to proportionately increase the price per item.
4. In case of supply contracts based on draw-downs binding amounts shall be communicated to us, through a drawdown request, at least 8 calendar weeks prior to the delivery date, except if agreed otherwise. Additional costs caused by delayed draw-downs shall be charged to the partner, which is based on our calculations. Also, we are not liable for any eventual delay in the delivery dates in case of delayed draw-downs. Subsequent modifications of the drawdown, for example of the delivery date, place and amount of delivery, require our written consent.

### § 4 Confidentiality

1. Each contracting party is held to use all documents (including samples, models and data) and information that they have received from this business relation exclusively for the purposes of the mutually pursued objectives, and shall keep them confidential to third parties with the same care and diligence as its own documents and information if the other contracting party identifies such documents and information as confidential, or if the other contracting party is obviously interested in such treatment.
2. This obligation commences with the first receipt of the documents or information, and ends 36 months after the end of this business relation.
3. This obligation shall not apply to documents and information that are available in the public domain, or were already available to the contracting party at the time of receipt but without any obligation of confidentiality, or were subsequently disclosed by a third party authorized to disclose, or documents and information that were developed by the recipient partner without the use of any confidential documents or information of the other contracting party.

### § 5 Drawings and specifications

1. If a contracting party provides to the other partner drawings or technical documentation on the goods to be delivered or their manufacturing, then these remain property of the contracting party that provides them. The disclosing contracting party shall make sure that it is always the latest updated drawings, technical documentation and order specifications that are used.

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## **§ 6 Copyrights**

1. We fundamentally don't accept any liability for the infringement of patent and intellectual property rights of others. Such rights shall be protected by the contracting party that provides such drawings or technical documentation to the other contracting party.

## **§ 7 Samples and manufacturing tools**

1. Except if agreed otherwise, the costs associated with the manufacturing or consignment or replacement, due to wear and tear, of samples and manufacturing tools (e.g. tools, forms and templates) shall be borne by the partner, and shall be invoiced by us separately from the goods to be delivered.
2. The costs of maintenance and proper upkeep and the risks of any possible damage or destruction of the manufacturing tools shall be borne by us.
3. If the partner suspends or terminates the cooperation during the time when the samples or manufacturing tools are being produced, then all production costs arising up to that point in time shall be borne by the partner.
4. Manufacturing tools remain in our possession at least until completion of the supply contract even if the partner has paid them. Thereafter, the partner is entitled to request return of the manufacturing tools if a mutual agreement is made on the time of return, and provided that the partner has fully delivered its contractual obligations. The manufacturing tools (e.g. serial tools) paid by the party partially shall remain our property.
5. Manufacturing tools associated with a particular customer (e.g. special tools) may be used for deliveries to third parties with a prior written consent of the partner only.
6. We retain manufacturing tools free of charge for three years after the last delivery to our partner. The partner is warned thereafter in writing to make a statement on any further use within 6 weeks. Our obligation to retain the manufacturing tools ends if no statement is made within said 6 weeks, or if no new order is placed.

## **§ 8 Prices**

1. Except to the extent agreed otherwise, prices are understood in euro, exclusive of VAT, packaging, freight, postage and insurance.

## **§ 9 Payment terms**

1. All invoices become due for payment immediately upon receipt, except for special and individual agreements. Article 286 section 3 BGB applies. We grant a discount of 2% in case of payment within 10 days from the invoice date, provided that the partner is not in delay with the payment of other claims. In case of late payment we are entitled to charge late payment interest at 8 percentage points above the prime rate. The claim for any other damages is hereby not excluded.
2. Also, we have the right of retention if the legal conditions are met.
3. Bills of exchange and checks will be accepted only under agreement and for processing, with the condition that they can be discounted. Discounting expenses will be charged from the due date of the amount invoiced. No warranty is given for the presentation of the bill of exchange or check at the right time, or for the filing of a bill protest.
4. If it turns out after the conclusion of the contract that our claims for payment are jeopardized by the defective performance of the partner, then we can refuse delivery, and set a reasonable deadline for the partner, within which the partner shall gradually deliver against payment, and provide a security. In case of refusal by the partner, or if the deadline lapses without delivery, we are entitled to rescind from the contract and claim indemnification for our damages.

## **§ 10 Delivery**

1. Except to the extent agreed otherwise, we make deliveries "ex works". For compliance with the delivery deadline or delivery term, our report on readiness for dispatch or receipt shall be of merit.
2. Delivery deadlines start with the dispatch of our order confirmation, or through expiry of the agreed processing period, and shall be extended as appropriate if the conditions under Section 16 apply.
3. Partial deliveries are permissible to the extent acceptable to the partner. These shall be invoiced separately.
4. The delivery of additional amounts or shortages is allowed up to 10% of the total ordered volume as required by the manufacturing process. The total price is adjusted in proportion to the volume of such additional deliveries or shortages.

## **§ 11 Freight and transfer of risks**

1. Goods reported as ready for dispatch shall be received by the partner without delay. Otherwise we shall be entitled to decide to freight such goods, or to store them to the cost and risk of the partner.
2. Except if agreed otherwise in writing, we shall select the means and route of transport used.
3. Goods are transported to the risk of the partner in case of pickup by the partner or a carrier or forwarder appointed by the partner.
4. Goods are transported to our risk in case of transport by us or our contracted carrier or forwarder.

## § 12 Delivery delays

1. If we can foresee that the goods cannot be delivered within the delivery deadline, then we shall inform the partner immediately by telephone and/or in writing, communicate the reasons thereof, and identify, as far as possible, the expected time of delivery.
2. Our delivery obligation is conditional on the proper and timely delivery of primary materials on our side. However, this only applies in case of the making of an appropriate background agreement with our supplier, and if we are not liable for the default of the delivery anyway.
3. If the delivery is delayed due to a circumstance under point 2 above or Section 16, and if we are not liable for such delay, or if the delay is attributable to an action or omission by the partner, then the delivery deadline shall be extended by an appropriate time period. The partner is entitled to rescind from the contract only if we are liable for the default under the delivery deadline, and if the partner has unsuccessfully set a reasonable extended deadline for us.

## § 13 Reservation of ownership

1. We reserve the ownership of the delivered goods until satisfaction of all our claims from the business relationship with the partner.
2. The partner is entitled to sell these goods in the course of usual business provided that it timely meets its obligations arising from the business relationship it maintains with us. However, the partner is not allowed to pledge or offer as security any goods with reserved ownership title. The partner is obliged to secure our rights in case of resale under credit of goods with reserved ownership title.
3. In case of violations of the obligations of the partner, in particular payment delay, we are entitled to rescind from the contract after the unsuccessful lapse of an extended deadline set by us; the legal provisions on the dispensability of the setting of a deadline and other claims on our side remain unaffected. We are entitled to rescind from the contract if the launch of an insolvency procedure is requested against the property of the partner.
4. As a security, the partner assigns to us already now all claims and rights arising from the sale or lease, to the extent permitted to the partner, of the goods that are associated with our ownership title. We hereby accept such assignment.
5. Any processing of or works on goods with reserved ownership title is always done by the partner to our benefit. If the any good with reserved ownership title is processed or inseparably merged with other objects that do not form our property, then we acquire partial ownership over the new thing in proportion to the invoiced value of the good with reserved ownership title to the other processed or merged objects at the time of such processing or merger. If our goods are combined or inseparably merged with other movable objects into one object, and if this thing is to be considered the main thing, then the partner shall transfer to us partial ownership in it to the extent that the main thing is its property, and the partner shall hold such full or partial ownership in trust for us. Otherwise, the same provisions apply to the thing created through processing or combination or merger as to goods with reserved ownership.
6. The partner shall immediately inform us, with the handing over of documents necessary for making an intervention, of any compulsory enforcement measures affecting the goods with reserved ownership, or claims assigned to us, or other securities claimed by third parties. The same applies to any other adverse effects.
7. If the value of existing securities exceeds the value of secured claims by more than 20% in total, then we are held, upon request from the partner, to release securities according to our choice, to the given extent.

## § 14 Quality defects

1. The condition of the goods is guided exclusively by the agreed technical delivery specifications. If we have to deliver on the basis of drawings, specifications, samples etc. of the partner, then the partner assumes responsibility for the risk of the suitability of the goods for the intended purpose of use. The time of transfer of risks under Section 11 is of merit for the contractual status of the goods.
2. When making deliveries, we comply with all applicable legal norms of the European Union and the Federal Republic of Germany, such as the REACH Decree (EC 1907/2006), the Act on Electric and Electronic Devices (ElektroG) as the national implementation of the Guideline 2002/95/EC (RoHS), and the Guideline 2002/96/EC (WEEE), as well as the Decree on End of Life Vehicles. We shall immediately inform the partner of any relevant modifications of the goods, their deliverability or usability or quality caused by legal norms, particularly the REACH Decree, and shall agree on appropriate measures on a case-by-case basis.
3. We are not liable either for quality defects caused by the partner or third parties through unprofessional or inappropriate use, defective mounting or consignment into operation, usual wear and tear, defective or negligent handling, or for the consequences of inappropriate modifications or consignment works carried out by the partner or a third party without our consent. The same applies to defects that reduce the value or fitness of the goods to an insignificant extent only.
4. Claims for quality defects forfeit after 12 months, except if agreed otherwise, or to the extent that the law mandatorily requires longer terms.
5. Pursuant to article 377 HGB, the partner shall carry out an inspection of the goods immediately upon their receipt, and shall immediately complain, in writing, about defects found. Hidden defects must be reported by the partner in writing immediately upon their discovery.
6. Complaints about defects that the partner could have detected with careful take-over or inspection of a first sample are excluded if a take-over procedure or an inspection of a first sample of the goods is agreed.

7. We shall be granted the opportunity to check the defect that is complained about. Faulty products shall be returned to us forthwith upon request by using a transport method agreed with us; we assume transport costs if the quality complaint is justified. If the partner fails to meet these obligations or effects modifications on the already faulty product without our consent, it shall lose its claims for quality defects.
8. In case of justified and timely quality complaints we have the choice to repair the faulty product, or to supply a faultless replacement. The place of delivery for the replacement is the original place of delivery.
9. If we fail to meet these obligations, or if we do not meet them according to the contract, the partner may set an extended deadline for us in writing. The partner may claim a reduction of the price, or rescind from the contract, or effect necessary repair works by itself or through third parties to our risk and cost after unsuccessful lapse of such extended deadline. If repair works are successfully done by the partner or a third party to our cost and risk, then all claims of the partner are deemed satisfied with reimbursement of the necessary costs suffered by the partner. No cost reimbursement is possible for incremental expenses resulting from the relocation of the goods to another location after delivery, except if this corresponds to the appropriate use of the goods.
10. Legal remedy claims of the partner can only be applied by the partner against us if the partner has not entered into any agreements with its customer that extend beyond the scope of quality complaint possibilities under law. Otherwise the last sentence in point 9 applies as appropriate.

#### **§ 15 Other claims, liability**

1. Except to the extent of different regulations below, claims of the partner against us for indemnity for damages and the reimbursement of expenses are excluded. This applies in particular to indemnity claims for damages due to the violation of liabilities from a debt obligation, and unlawful actions. This means that we are, for example, not liable for damages that are not suffered directly by the goods supplied. First of all we are not liable for lost profit or other pecuniary damages.
2. The above limitations to liability shall not apply
  - in case of intent or gross negligence on our side;
  - in case of culpable violation of material contractual obligations; however, also in case of culpable violations of contractual obligations we are only liable for typical damages under the contract that can be reasonably expected, except for the cases of intent and gross negligence on our side;
  - in the cases when, pursuant to the Product Liability Act, liability applies to personal injury and material damages suffered by privately used objects due to the defect of the goods supplied, and
  - in case of any damages to the life, bodily integrity and health of persons, and if guaranteed characteristics are missing, provided and to the extent that such promise was made specifically for the purpose of securing the partner against damages that were suffered by the partner elsewhere than directly on the goods delivered.
3. To the extent that our liability is excluded or limited, this also applies to the personal liability of our employees, workers, collaborators, legal representatives and delivery agents.
4. Legal regulations on the burden of proof remain unaffected.

#### **§ 16 Force majeure**

1. Force majeure, labor disputes, public measures, defaulted supplies from our suppliers and other unpredictable, unavoidable and serious events release the partner from its obligation to deliver to the extent and for the duration of the effect of such events. This also applies if these events occur at a time when the affected partner is already in delay, except if it commits the delay deliberately or through gross negligence. The contracting parties are obliged to provide all necessary information immediately and to an extent that can be reasonably expected, and to adapt their obligations to the changed circumstances in good faith.

#### **§ 17 Place of delivery, place of jurisdiction and applicable law**

1. Except to the extent resulting from the order confirmation, the place of delivery for all our obligations shall be our business seat.
2. The place of jurisdiction for all legal disputes, also in the framework of any litigation concerning checks and bills of exchange, shall be our seat of business. We are also entitled to file a claim at the seat of the partner.
3. The law of the Federal Republic of Germany shall apply exclusively to the contractual relationship.

***Otto Bauckhage GmbH & Co. KG***

**Heike Schäfer**

CEO