

## **General terms and conditions of sale, delivery and payment for companies in the Bernecker Group**

### § 1 Validity of the conditions

- (1) These terms of sale, delivery and payment apply exclusively to our offers, sales and deliveries. We only recognize conditions that conflict with or deviate from our terms of sale, delivery and payment if they are confirmed in writing as an addition to our terms of sale, delivery and payment.
- (2) Our terms of sale, delivery and payment shall also apply if we carry out the delivery without reservation in the knowledge that the customer's conditions conflict with or deviate from our terms of sale, delivery and payment. References or counter-confirmations by the customer with reference to his purchasing conditions are hereby expressly contradicted.
- (3) Our terms of sale, delivery and payment also apply to all future transactions with the customer.

### § 2 Offer and conclusion of contract

- (1) Our offers are non-binding and can therefore be revoked by us at any time - if acceptance does not take place within 10 working days - before receipt of the acceptance by the customer.
- (2) The customer is bound to his order for a period of 14 days. The acceptance is made by us in text form, unless deliveries or invoicing are made by us immediately. The same applies to any supplements, amendments and ancillary agreements.
- (3) The information contained in our specification is decisive for the quality of the delivery item owed by us. The information contained in catalogues, brochures, circulars, advertisements, illustrations and price lists do not determine the quality of the delivery item unless they are expressly included in the specification with reference to the specification.
- (4) Statements in our specifications to determine the quality of the delivery item are not guarantees, in particular no durability guarantees. Information on the scope of delivery and services is not a promise of assumption of a procurement risk. We reserve the right to receive correct and timely deliveries from our suppliers. The assumption of guarantees and the procurement risk require express written agreements between the parties in which the terms of guarantee and procurement risk are expressly used.
- (5) Insofar as we do not expressly assume responsibility for assembly, this lies exclusively with the customer. Drawings handed out by us or other instructions for the installation of our delivery items are not assembly instructions, but only instructions on the dimensions of the delivery item and the location where the delivery item can be installed within the overall system/vehicle of the customer.

### § 3 Prices

- (1) Unless otherwise agreed, the prices apply ex works plus the respective VAT applicable in the federal republic Germany. Additional costs for re-wrapping and reusable packaging not returned to us, transport, insurance and customs etc. as well as an agreed assembly will be charged separately.
- (2) Insofar as we are obliged to take back the packaging according to the Packaging Ordinance, the customer must return it to us at his own expense.
- (3) The price for the number of items listed in the offer is decisive for our offer. We are entitled to deliver up to 10% more or less (less) for a quantity of up to 1,000 parts, for a quantity of more than 1,000 parts. If there is an excess or short delivery, the price is determined by the quantity actually delivered.

### § 4 Payment

- (1) Payments are due for payment on the agreed payment date. If no specific payment date has been determined, the payments are due for payment upon receipt of the invoice or a corresponding payment schedule. If the receipt of the invoice or the payment schedule is uncertain, payments are due for payment upon receipt of the deliveries and services from us. Invoices are payable 10 days after the invoice date with a 2% discount and thereafter within 30 days without discount. Repair and assembly costs as well as service invoices are to be paid immediately upon receipt of the invoice without any deduction.
- (2) In the case of outstanding invoices from the customer, payments apply to cover the oldest due claim.
- (3) Payments with bank exchange and checks are cash payments. These are only accepted as payment. All discount and collection charges, fees and taxes arising from the acceptance, transfer and collection of bills of exchange shall be borne by the customer. We are not obliged to present bills of exchange, checks and other instruction papers in good time. If a bill of exchange is not discounted or not redeemed on time, the entire claim or remaining claim is due for payment by us.
- (4) If the customer does not meet his payment obligations, in particular does not cash a check or bill of exchange or stops paying, we are entitled to make the entire remaining claim due immediately, even if we have accepted checks or bills of exchange. In this case, we are also entitled to refuse deliveries and services that are still incumbent on us until the customer has rendered the counter-performance or has provided sufficient security for the outstanding deliveries and services.
- (5) Only undisputed or legally established claims entitle the customer to set-off or retention.

### § 5 Scope of delivery

- (1) The scope of the delivery is determined according to our information in our order confirmation, with the proviso that we are entitled to reduce this by +/-10% for a scope of delivery of up to 1,000 parts and by +/-10% for a scope of delivery of more than 1,000 parts by +/-5% to deviate.
- (2) We have the right to make technical changes to the delivery item if this does not affect the technical functions or if this is customary in the trade and reasonable for the customer.

### § 6 Delivery time, delay in delivery and non-performance

- (1) The delivery date specified in writing in the order confirmation is deemed to be the delivery time. If the customer has not provided all of the documents, approvals, releases, etc. to be procured by him at least one month before the delivery date specified in writing, the delivery date specified in writing is extended by one month, starting from the point in time at which the above-mentioned documents, approvals, releases, etc. have been received by us in full.
- (2) The delivery period is met if the delivery item has left our works by the end of the period or if the customer has been informed of our readiness for dispatch when it is picked up by the customer.
- (3) Unless otherwise agreed, in the case of on-call delivery contracts, the customer is obliged to specify delivery schedules covering at least 6 months in advance and to call off the delivery schedules in good time before the respective delivery date. If the customer does not comply with this obligation or does not do so as stipulated, we are entitled, after setting a reasonable deadline, to make the call and/or the allocation ourselves, to deliver the goods or to withdraw from the contract. The right to claim damages for breach of duty is not excluded by the withdrawal.
- (4) If we prove that, despite careful selection of our sub-suppliers and despite the conclusion of the necessary contracts on reasonable terms, one of our sub-suppliers does not deliver on time, the delivery period is extended by the period of the delay caused by the late delivery by our sub-supplier was caused. If the above hindrance lasts longer than one month, the customer is entitled to withdraw from the contract with regard to the part that has not yet been fulfilled. Claims for damages are excluded in this case. We can only refer to the above circumstances if we have informed the customer of this circumstance immediately, i.e. 3 working days after becoming aware of it.
- (5) Correct and timely supply of delivery remains reserved.
- (6) If the customer is in default of acceptance, he must compensate us for the damage incurred as a result of this breach of duty, in particular for the costs incurred by us for storing the delivery item. This does not apply if the customer is not responsible for the breach of duty. In this case, the customer's assumption of costs is limited to the costs incurred by us for storing the delivery items. We are also entitled to set a reasonable deadline for acceptance, to otherwise dispose of the delivery item and to supply the customer within a reasonable extended deadline.

### § 7 Force Majeure

- (1) If we are prevented from fulfilling our obligations after the conclusion of the contract due to the occurrence of unforeseen, unusual circumstances that could not be averted despite the care that was reasonable given the circumstances of the case, in particular operational disruptions, operational sanctions, delays in the delivery of raw materials, energy supply difficulties, etc., the delivery period will be extended to a reasonable extent. If delivery becomes impossible due to these circumstances, we are released from our delivery obligations. This regulation also applies accordingly in cases of lockouts and strikes.
- (2) If the above hindrance lasts longer than one month, both parties are entitled to withdraw from the contract with regard to the part that has not yet been fulfilled with claims for damages and interest, but the customer is excluded in the case of force majeure. We can only refer to the circumstances mentioned here if we have informed the customer of these circumstances immediately after they occurred.

### § 8 Delivery of goods

If the goods are sent to the customer at his request, or if the delivery takes place - which is usually the case - ex works, the risk of accidental damage passes when the item is delivered to the shipping agent, but at the latest when it leaves the factory or warehouse loss and accidental deterioration of the goods to the customer, regardless of whether the shipment is made from the place of performance and who bears the freight costs. If the goods are ready for dispatch and the dispatch or acceptance is delayed for reasons for which we are not responsible, the risk passes to the customer upon receipt of the notification of readiness for dispatch.

### § 9 Retention of title

- (1) The delivered goods remain our property until all claims arising from the business relationship between us and the customer have been paid in full. The customer is entitled to dispose of the delivery item in the ordinary course of business.
- (2) The retention of title also extends to the products created by processing, mixing or combining the delivery items at their full value, whereby we are considered the manufacturer. If third-party goods are processed, mixed or combined with third-party goods, we acquire co-ownership in proportion to the invoice value of these agreed goods.
- (3) The customer hereby assigns the claims against third parties arising from the resale to us in total or in the amount of our co-ownership share (paragraph 2) as security. We accept the assignment. The customer is authorized to collect these for the invoice to us until revocation or cessation of his payment to us. The customer is not authorized to assign this claim for the purpose of collecting the claim by way of charging, unless the obligation of the factor is established at the same time to effect the consideration in the amount of the share of the claim from us directly to us for as long as there are still claims from us against the customer. At our request, the customer must provide us with the information necessary to collect the claim by submitting the relevant delivery contracts with his customer, the invoice and an overview of the payments made by the customer's customer.
- (4) The purchaser must inform us immediately by registered letter and hand over the documents required for an intervention about access by third parties, in particular also enforcement measures in the goods belonging to us and claims.
- (5) If the purchaser is in arrears with his payments to us twice within 6 months and/or if the purchaser is insolvent and/or his insolvency becomes apparent on the basis of objective criteria, we are entitled to reclaim the delivery item and, in the event of resale, to resell it to collect the claims assigned to us directly from the buyer of the customer. The surrender of the delivery item to us and/or the inclusion of the claim assigned to us does not automatically lead to withdrawal from the contract with the customer.
- (6) Insofar as the security rights to which we are entitled exceed all of our unpaid claims against the customer by more than 10%, we are obliged to release the security rights of our choice at the customer's request.
- (7) The customer keeps the goods subject to retention of title for us. He must insure them against fire, theft and water. Of the purchaser hereby assigns to his claims for compensation to which he is entitled from the type of damage mentioned in § 2 against insurance companies or other compensation obligations in the amount of the respective claim. If there is a ban on assignment, the customer shall ensure that the insurer expressly agrees to the assignment.

### § 10 Product monitoring and product warning obligation

- (1) In order to protect the end user from dangers of all kinds, the customer is obliged to continuously monitor our products from a safety point of view (product monitoring obligation). If it becomes apparent that the product poses a risk, the customer is obliged to inform us immediately in writing to be informed of this as soon as possible (product warning obligation).
- (2) If claims are made against us by third parties for breach of the product monitoring and/or product warning obligation and this breach of the product monitoring and/or product warning obligation is due to a violation of the customer's product monitoring and product warning obligation, the customer shall have to compensate us for the damage that we have suffered as a result of his breach of duty.

### § 11 Notification of defects

- (1) The customer's obligation to examine and give notice of defects is determined by Section 377 of the German Commercial Code (HGB).
- (2) In the case of larger deliveries of similar goods, the entire delivered batch can only be rejected as defective if the defects have been determined using a recognized representative random sample procedure.

### § 12 Material defects/statute of limitations

- (1) If the delivery item and/or the installation and/or the documentation is not free of material defects or if we have assumed a guarantee for certain characteristics, we shall, at our discretion, either remedy the defect or deliver a delivery item free of defects.
- (2) If the repair fails after a second successful attempt, the customer can either withdraw from the contract or reduce the purchase price. If the material defect is due to gross negligence or intent on the part of us, our vicarious agents or vicarious agents and/or the defect leads to a breach of essential contractual obligations (cardinal obligations) for which we are responsible

and/or to an injury to life, limb, health and/or if we have assumed a guarantee for certain quality features, the customer can also claim damages for the material defect instead of withdrawing from the contract or reducing the purchase price. If the breach of cardinal obligations is based on simple negligence and the customer incurs financial or material damage as a result, the claim for damages is limited to the typically foreseeable damage. Compensation for damages due to loss of production and/or lost profit is excluded in cases of simple negligence. This limitation of liability applies accordingly to our vicarious agents.

- (3) If we decide to rectify the defect, we shall bear the costs required for the rectification. This reimbursement of costs does not include any expenses incurred as a result of the purchased item being taken to a location other than the customer's registered office/place of delivery after delivery.
- (4) The customer does not have any claims for material defects - in the case of defects caused by improper handling or excessive use by the customer or his customers have arisen; - in the event of operating and application errors; - if the delivery item is modified by third parties and/or by installing parts from third-party sources, unless that the defect is not causally related to this change; - if the installation and handling instructions communicated by us are not complied with by the customer or his customer, unless the defect is not causally related to non-compliance; - for the suitability of our goods for a specific purpose if the concrete possibility of use does not result from the order confirmation or from one of the written instructions enclosed with the goods, or the suitability for a specific purpose was not expressly confirmed by us.
- (5) If it turns out that the defect is due to a circumstance that does not obligate us to liability for material defects, the customer must reimburse us for all costs incurred as a result.
- (6) The regular limitation period for claims for defects for delivery items that are not usually used for buildings is 1 year from delivery of the delivery item to the customer. Insofar as we can be held liable for damages, the shortening of the limitation period for claims for damages due to material defects in the event of gross negligence or intent, in the event of a breach of essential contractual obligations (cardinal obligations) and an injury to life, limb, health and in cases of an injury guarantee selected by us, is excluded.
- (6) If the delivery items are used items, all claims for material defects are excluded. This exclusion does not apply to claims for damages due to gross negligence or intent, a breach of essential contractual obligations (cardinal obligations) for which we are responsible, injury to life, limb or health for which we are responsible, a violation of the Product Liability Act and in cases of a quality guarantee granted by us, excluded.
- (7) Any application of the Product Liability Act remains unaffected by this regulation.

### § 13 Claims for damages due to the breach of protection obligations

- (1) Our liability for defects in quality or title is not covered by this section (§13). The provisions of §12 and 14 of these general terms and conditions apply to this liability.
- (2) Claims for damages against us due to other breaches of duty by us, in particular of duties to protect and/or due to obligations similar to legal transfers are excluded, unless gross negligence or intent and/or a breach of essential contractual obligations (cardinal obligations) and/or injury to life, body, health by us, our vicarious agents or vicarious agents. If the liability is based on simple negligence due to the violation of essential contractual obligations, the claim for damages in the case of financial loss and damage to property is limited to the typically foreseeable damage. Liability for product failure and/or lost profit is excluded in the case of simple negligence.
- (3) This limitation of liability according to paragraph (2) shall apply mutatis mutandis to tortious claims due to tortious acts.
- (4) Claims for damages against us due to delays in delivery or due to non-performed services are excluded unless there is gross negligence or intent on the part of us or our vicarious agents. This limitation of liability does not apply in the event of a breach of essential contractual obligations (cardinal obligations) for which we are responsible. If we can be held liable for damages due to simple negligence (breach of cardinal obligations), the damages are limited to the typically foreseeable damages. Claims for damages due to loss of production and/or lost profit are excluded in cases of simple negligence. Any right of withdrawal to which the customer is entitled due to these delays in delivery and/or services not provided remains unaffected by this limitation of liability.
- (5) Claims for damages due to other breaches of duty regulated in this section, delay in delivery and non-delivery, which are not claims for material defects and/or claims for defects in title, become time-barred within one year from the end of the year in which the claim arose and the customer from has taken note of the circumstances justifying the claim or should have become aware of it without gross negligence. The maximum periods for statutes of limitations regulated in Section 199 Paragraphs 2 and 3 of the German Civil Code remain unaffected by this regulation. This restriction does not apply to claims for damages based on gross negligence or intent, a breach of essential contractual obligations (cardinal obligations) for which we are responsible, as well as injury to life, limb, health and freedom, as well as a violation of the Product Liability Act by us or our vicarious agents based.
- (6) Any application of the Product Liability Act remains unaffected by this regulation.

### § 14 Industrial property rights

- (1) Claims for damages due to the infringement of trademarks, patents, patent applications, utility models, designs and copyrights against us, our vicarious agents and vicarious agents are excluded, unless there is gross negligence or intent on the part of us, our vicarious agents and vicarious agents or our non-violation of the above industrial property rights has been guaranteed. This limitation of liability does not apply in the event of a breach of essential contractual obligations (cardinal obligations) for which we or our vicarious agents are responsible. If we or our vicarious agents can be held liable for payment of damages due to simple negligence (breach of cardinal obligations), the damages are limited to the typically foreseeable damages. In the case of liability for simple negligence, liability for loss of production and lost profit is excluded. This limitation of liability applies accordingly to our vicarious agents.
- (2) The customer's right to withdraw due to the infringement of the above industrial property rights remains unaffected.
- (3) Insofar as claims are made by the infringement of property rights of third parties, the purchaser has only provided proof of this defect in title if a final judgment has been issued against him in this regard. The customer's right to notify us of the dispute is not affected by this regulation.

### § 15 Suspension of the statute of limitations in negotiations

Negotiations about claims for material defects or other claims for damages are only pending if the parties have declared in writing that they are negotiating about such claims. Set the calling to this script the written form requirement constitutes abusive behavior, neither party can refer to compliance with this written form requirement.

### § 16 Order-related specifications and provision

- (1) If the purchaser stipulates or provides the use of certain production facilities, devices, tools and constructions, drawings or samples for execution in accordance with the contract, or if we produce them on behalf of the purchaser, the purchaser assumes liability for the correctness of the information and the usability of the provision. In addition, the customer is responsible for ensuring that the use of these facilities and devices and/or other specifications does not infringe any third-party property rights or other third-party rights.
- (2) Order-related facilities within the meaning of paragraph (1) remain our property in the absence of a special agreement. However, this does not apply in cases in which the customer has fully reimbursed us for the costs.
- (3) If the customer is the owner of the order-related equipment, the customer is obliged to collect the materials provided from us after being requested to do so and having set a reasonable deadline. If the deadline elapses without result, we are entitled to dispose of the items provided and to invoice the customer for the costs for this.

### § 17 Business Secrets

- (1) Plans, drawings and technical documents that are handed over to the customer remain our property. Without our consent, the customer may not use, copy, reproduce or hand them over to third parties, make them accessible or disclose them. This also applies if these documents do not contain a confidentiality notice.
- (2) The customer ensures that his employees, consultants, shareholders and others who learn of these trade secrets are obliged in writing to protect our trade secrets to the extent described above.
- (3) These obligations also apply after the end of the contractual relationship.

### § 18 Place of Performance, Applicable Law, Place of Jurisdiction, Partial Invalidity

- (1) The place of performance for deliveries and payments is Mühlacker, Germany
- (2) The law of the Federal Republic of Germany applies to these general terms and conditions and the entire legal relationship between us and the customer, excluding the UN Sales Convention (CISG).
- (3) The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Stuttgart and, at our option, also the place of jurisdiction of the customer.
- (4) Ancillary agreements, reservations, changes and additions are made in writing.
- (5) Should a provision of these General Terms and Conditions of Sale, Delivery and Payment be or become invalid, this shall not affect the validity of all other provisions. If other agreements within the framework of the cooperation with the customer are or become invalid, the validity of all other agreements is not affected. In such a case, the invalid provision is to be interpreted or supplemented in such a way that the economic purpose intended with the invalid provision is achieved in a legally permissible manner.

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