

General Terms and Conditions of Delivery and Payment of Berghoef GmbH (as of: January 2013)

1. Scope

1.1

The following terms and conditions apply to all - including future - deliveries and services (simply called "deliveries" hereinafter) to the customers named in section 1.2, unless agreed otherwise in writing. General business conditions of the customer do not apply even if we do not explicitly object to them in writing.

1.2

These conditions apply only to entrepreneurs within the meaning of § 14 BGB (Bürgerliches Gesetzbuch [German Civil Code]), legal persons under public law and special funds under public law (referred to as "Customer" hereinafter).

2. Offers

2.1

Our offers are non-binding. The Customer is bound to his order for 14 days after we receive it, unless the order states otherwise. Contracts are only concluded through our written order confirmation or delivery.

2.2

Verbal side agreements or promises by our employees that go beyond the content of the written contract or modify these terms and conditions to our disadvantage are only valid after written confirmation.

2.3

Our images, drawings, and colour, weight and dimension information are only approximations unless they are a) explicitly stated to be binding or b) essential.

2.4

Our product descriptions are not guarantees.

2.5

Unless agreed otherwise, usual or minor technologically unavoidable deviations in quality, colour, dimension or weight do not constitute defects.

2.6

The quantities stated in the delivery orders will be definitive for invoicing.

3. Price

3.1

Our prices are understood to be net as per FCA Bischweier (Incoterms 2010®), in Euros and exclusive of packaging costs and VAT.

3.2

If the time for delivery is more than 2 months, we are entitled to adjust the agreed prices if significant changes in labour, material, energy or commodities costs occur after conclusion of the contract and we are not responsible for these changes. Price increases will not exceed 10 %.

4. Payment

4.1

Payments must be made without any deductions to our bank account within 30 days of receipt of invoice. The time of payment will be defined as the time of irrevocable receipt of the payment in our account.

We only accept bills of exchange or cheques on account of payment ["zahlungshalber"] and only after written agreement. Encashment charges, discount charges and bill of exchange charges as well as interest must always be paid by the Customer and are due immediately.

4.2

If payment is late, we will charge interest of 8 per centage points above the base interest rate, or at least 10 %, starting on the due date.

4.3

The Customer may only offset or exercise a right of retention if his counter-claims are uncontested or have been legally found to be valid without further recourse.

4.4

If justified doubts arise concerning the Customer's ability to pay, for example, due to slow mode of payment, late payment, bill of exchange protest or cheque protest, we may require securities or cash payment concurrent with our performance. If the Customer does not comply with such a request by a reasonable deadline, we may withdraw from the part of the contract that has not yet been performed. The deadline can be dispensed with if the Customer is obviously in no position to provide security, for example if a petition has been filed to open insolvency proceedings for the Customer's assets.

5. Delivery and transfer of risk, reservation of own supply, partial deliveries

5.1

Delivery will take place pursuant to FCA Bischweier (Incoterms 2010®).

5.2

Risk will still be transferred to the Customer pursuant to FCA Bischweier (Incoterms 2010®) even if we have undertaken other services, e.g. shipping costs or delivery and set-up, including by our own transport personnel.

5.3

Our delivery obligation is subject to timely and correct delivery by our own suppliers (in particular, of semi-finished products), unless we are at fault for the incorrect or late delivery by our own suppliers. In such cases, we may withdraw from the contract.

5.4

Partial deliveries are permitted within reasonable limits.

6. Delivery periods

6.1

Delivery periods represent approximate deadlines.

6.2

The delivery period begins upon receipt of the order confirmation, but not before clarification of all details of order execution and technical issues as well as receipt of an agreed advance payment or payment security. The delivery deadline is considered met if the item has been loaded onto the means of conveyance provided by the Customer by the deadline. If shipping is delayed through no fault of our own, the delivery deadline is considered met upon notification of readiness for shipping.

6.3

Customer requests for modification extend the delivery deadline until we have checked their feasibility and by the period required to implement the new specifications in production. If the request for modification interrupts on-going production, we may bring forward and complete other orders. We are not obligated to keep production capacities free during the delay.

6.4

If delivery is late, our liability in case of ordinary negligence is limited to 0.5 % per completed week of delay, up to a total of max. 5 % of the net invoice amount of the part of the delivery affected by the delay. The claim for damages instead of performance pursuant to section 11 is not affected by this. The Customer must inform us of contractual penalties owed to his buyer no later than at conclusion of contract.

6.5

If shipping is delayed because of circumstances for which we are not responsible, we will charge at least 1 % of the net invoice amount for the storage of the delivery per month of storage commenced.

7. Force majeure

7.1

Unforeseen and unavoidable events for which we are not responsible (e. g. force majeure; strikes and lock-outs; interruptions of services; difficulties in acquiring materials or energy; delays in transport; lack of workforce, energy or commodities; government actions; and difficulties in acquiring permits, esp. import or export licences) extend the delivery deadline by the duration of the disruption and its effects. This also applies if obstacles affect our sub-suppliers or occur during an existing delay.

7.2

If the obstacle is more than merely temporary, both contract partners are entitled to withdraw from the contract. Claims for damages are excluded in the cases listed in section 7.1.

8. Packaging

8.1

Redemption and disposal of our packaging accrued in Germany by private end consumers within the meaning of the VerpackV (Verpackungsverordnung [German regulation on packaging]) are guaranteed free of charge through our participation in a disposal system pursuant to § 6 VerpackV.

8.2

Our packaging accrued in Germany but not by private end consumers will be accepted back at our place of business during usual business hours; the Customer bears the costs of return shipment and proper disposal. Packaging must be returned clean, free of foreign substances and sorted by type.

9. Retention of title

9.1

We retain the title to the delivered goods in order to secure all claims against the Customer and the Customer's affiliated companies to which we are entitled from the present and future business relationship. If there is a current account relationship with the Customer, the retention of title extends to the recognised balance.

9.2

The Customer is obligated to treat the goods subject to retention of title with care and maintain them in good condition; in particular, the Customer is obligated to insure them adequately against loss or damage at replacement value at own cost. The insurance policy and proof of payment of premiums must be submitted to us upon request. The Customer assigns claims from the insurance relationship to us effective as of now, subject to the resolutive condition of transfer of title to the Customer.

9.3

Any modification or reworking of the goods subject to retention of title by the Customer is always on our behalf without placing us under any obligation and without any acquisition of title by the Customer. If the goods are mixed with or connected to other goods, we acquire joint title to the new goods in the proportion of the net invoice amount of the goods subject to retention of title to that of the other materials. The new item created is considered a good subject to retention of title within the meaning of this section 9. The Customer will store the new good on our behalf, but does not acquire any claims against us in doing so.

9.4

If the goods are reworked as part of a contract for specific work, a proportion of the wage claim for the work is assigned to us effective as of now that is equal to the proportional amount of our invoice for the goods subject to retention of title that are reworked.

9.5

The Customer is entitled to re-sell the goods subject to retention of title or the new good in the normal course of business; however, the Customer assigns to us all claims in advance and in full that the Customer acquires from resale or re-use.

9.6

The Customer is entitled to collect the claims assigned to us as long as he fulfils his payment obligations from the collected proceeds.

9.7

If the Customer no longer fulfils his payment obligations to us, we can revoke the right to re-sell and re-use and require the Customer to report all assigned claims and their obligors to us, disclose all information necessary to collect, surrender the associated documents and notify the obligors of the assignment of claims. Taking back goods subject to retention of title does not constitute withdrawal from the contract. If we declare withdrawal from the contract, we are entitled to realization in the open market at our discretion.

9.8

Third-party access to the goods subject to retention of title must be reported to us immediately in writing. The Customer will bear any costs incurred by blocking such access if they cannot be exacted from the third party.

9.9

If the value of the securities exceeds our claims by more than 10 %, we will release securities of our choice to such extent at the Customer's request.

9.10

If the right of retention is not valid under the laws of the country in which the delivered goods are located, the Customer must provide us with a security of equivalent value at our request. If the Customer does not fulfil this request, we may require immediate payment of all outstanding invoices without regard to agreed time for payment.

10. Liability for defects

10.1

Apparent material defects must be reported to us in writing without delay, but no later than 8 days after receipt of the goods; hidden material defects must be reported to us no later than 8 days after their discovery. If these deadlines pass, all claims and rights based on liability for these defects expire.

10.2

Infringement of third-party rights is only a defect if these intellectual property rights exist in the Federal Republic of Germany.

10.3

In cases of justified notices of defects, we will either deliver a replacement or repair the goods, at our choice. If this supplementary performance fails, the Customer may require reduction of the price or - if the defects are substantial - withdraw from the contract. If the supplementary performance fails, the Customer also has the right to require compensation instead of performance in accordance with section 11.1.

10.4

Costs of repair incurred because the purchased item was transported to a different location than the Customer's commercial business branch will not be assumed.

10.5

If the defect is due to an essential third-party product, we are entitled to limit our liability to assignment of the defect liability claims and rights to which we are entitled against the supplier of this third-party product, unless satisfaction using the assigned claim or right fails or cannot be obtained for other reasons. In this case, the Customer will continue to be entitled to the rights in section 10.3.

10.6

The period of limitation is 12 months from the transfer of risk as long as we are not liable for physical injury, breach of duties intentionally or through gross negligence, maliciously conceal the defect or have provided guaranty or a longer statutory period is mandated.

11. General liability

11.1

Claims for damages - regardless of type - against us are excluded if we, our legal representatives or our vicarious agents caused the damages due to ordinary negligence.

This limitation of liability does not apply in cases of physical injury, if a contractual guaranty has been provided, or if essential contractual obligations have been breached. Essential contractual obligations are those whose performance permits execution of the contract in the first place and upon whose performance the Customer routinely relies and is entitled to rely and whose breach endangers achievement of the contractual purpose.

If a guaranty is provided, our liability is limited to the scope of the guaranty and, in cases of ordinary negligent breach of essential contractual obligations, limited to damages that are typical for the contract and foreseeable.

Claims under the ProdHaftG (Produkthaftungsgesetz [Product Liability Act]) remain unaffected.

11.2

Claims for damages expire one year after the Customer becomes aware of these damages and the duty of compensation or should have become aware of them in the absence of gross negligence. Claims under the ProdHaftG, due to physical injury or due to defects remain unaffected by this.

12. Place of performance, forum, choice of law

12.1

The place of performance for all services in the delivery contracts is our place of business.

12.2

Jurisdiction for all disputes arising from the contract is that of our place of business. We are, however, also entitled to sue the Customer at the Customer's place of business.

12.3

German law applies. The UN Convention on Contracts for the International Sale of Goods of 11/04/1980 is excluded.