

General Terms and Conditions of Business

BÜFA GmbH & Co. KG

I. General

1. The following General Terms and Conditions of Business form the content of the purchase order. Contrary or deviating conditions of purchase or other restrictions of the Purchaser are not recognised unless the Vendor has agreed to them expressly and in writing from case to case. The following General Terms and Conditions of Business apply for all present and future business relations, deliveries and services vis-à-vis businesspeople and entrepreneurs in the meaning of Article 14 BGB (German Civil Code) as well as public-sector clients.

II. Offers, orders

1. Offers by the Vendor are without obligation regarding price, quantity, delivery period and delivery possibility.
2. Orders by the Purchaser become binding for the Vendor by written or printed confirmation by the Vendor (also invoice or delivery note).
3. Oral additional agreements only apply if they have been confirmed in writing by us. Information regarding quality and stability and other data shall only be considered to be guarantees if they are agreed or designated as such in writing.

III. Invoicing

1. The Vendor's prices valid at the time of delivery will be invoiced.
2. In the event that the Vendor generally increase his prices in the period between entry into the contract and delivery, the Purchaser shall be entitled to withdraw from the contract within a period of two weeks after notification of the increase in price, unless the price increase is based exclusively on an increase in freight tariffs. The right of withdrawal shall not apply for long-term delivery contracts (continuous obligation agreements).
3. If payment is agreed in a currency other than Euro (EUR) (foreign currency), the Vendor reserves the right to increase or reduce his purchase price requirement in the foreign currency on issue of the invoice in such a way that the amount shown in the invoice corresponds to the equivalent value in Euro calculated on the basis of the foreign exchange debt at the time the agreement was entered into.

IV. Billing and payment

1. The submission of bills of exchange requires approval of the Vendor; this is done on account of payment. The maximum term for bills is ninety days after date of invoice. Discount and bill expenditures and similar charges as of thirty days after the date of invoice shall be for the account of the Purchaser.
2. If there are any justified doubts as to the payment capability or creditworthiness of the Purchaser, and if the Purchaser is not willing to pay cash in advance or to provide a suitable security for the payment to be made despite a corresponding request, the Vendor shall be entitled to withdraw from the contract in as far as he has not yet performed himself.
3. Payments are only deemed to be made when the amount is finally available in an account of the Vendor.
4. The Vendor reserves the right to use payments to settle the oldest due invoice items plus the default interest accrued for these and costs, in the sequence: costs, interest, main claim.
5. Right of retention and offsetting by the Purchaser are only possible with claims that are undisputed or have been established as final and non-appealable by a court of law; moreover in the event of retention the claim must originate from the same contractual relationship.
6. We are authorized, at our discretion, to transmit the invoices on paper or electronically.

V. Delivery

1. The Vendor shall always endeavour to deliver as quickly as possible. Fixed delivery dates only apply if these are expressly agreed in writing.
2. If a fixed delivery date is agreed, in the event of delay in delivery the Purchaser shall set a reasonable period of grace of generally four weeks.
3. Reservations are made regarding the Vendor obtaining correct and timely delivery himself.
4. The date of delivery is deemed to be the date on which the goods leave the works or a store and if this date cannot be determined, the date on which they are made available to the Purchaser.
5. Special conditions apply for the provision of packing materials of the Vendor, including the provision of tank vehicles and tank containers.

VI. Force majeure, contract impediments

Force majeure of all kinds, unforeseeable operating, transport or shipping disturbances, fire damage, flooding, unforeseeable shortages of labour, energy, raw materials or auxiliary materials, strikes, lockouts, orders by public authorities, or other obstacles for which the party liable to perform is not responsible that reduce, delay, prevent or make the production, dispatch or acceptance or use unreasonable release the parties from the obligation to deliver or accept for the period and extent of the disturbance. If delivery and or acceptance is exceeded by more than eight weeks as a result of the disturbance, both parties are entitled to withdraw. In the event of partial or complete loss of the Vendor's procurement sources, the latter is not obliged to obtain supplies from third party upstream suppliers. In this case the Vendor is entitled to distribute the available quantities of goods taking into account his own requirements.

VII. Dispatch

1. The Vendor reserves the right to select the shipping route and type of dispatch. Extra costs caused by special shipping wishes of the Purchaser are for the account of the Purchaser. The same applies for increases in freight rates occurring after the agreement has been concluded, any extra costs for redirection, storage costs etc., unless freight-free delivery is agreed.
2. Our deliveries are made ex store or ex works. On transfer of the goods to the carrier - regardless of whether he is commissioned by the Purchaser, manufacturer or by us - the risk is transferred to the Purchaser. On delivery with our vehicles the risk is transferred to the Purchaser in as far as the goods are made available at the place he states.
3. If dispatch is delayed at the wish or due to the fault of the Purchaser, the goods shall be stored at the cost and risk of the Purchaser. In this case the advice of readiness for dispatch shall be equated with dispatch. The invoice for the goods shall be due for payment immediately on storage intake.
4. If our staff assist on delivery of the goods, they act at the sole risk of the Purchaser and not as our agents. Assistance in unloading (including unloading equipment) onward transport etc. will be billed additionally at cost.
5. The above rules apply accordingly on delivery by third-party carriage firms in as far as liability of the Vendor could be derived from their behaviour. The liability of the third party is not affected by this.
6. If no special agreements are made on deposits, multiple use packing materials are considered to have been made available to the Purchaser on loan only.

VIII. Retention of title

1. The goods shall only be transferred to the ownership of the Purchaser when the latter has satisfied all his obligations arising from the business connection with the Vendor, including secondary requirements, claims for damages and redemption of checks and bills. The retention of title shall be retained if individual claims by the Vendor are included in a current invoice and the balance is drawn and recognised.
2. The Vendor is entitled to require surrender of the goods for which title is retained from the Purchaser without setting a period of grace and without withdrawing from the contract if the Purchaser is in default with fulfilment of his obligations to the Vendor. The repossession of the goods to which title is retained only represents a withdrawal from the contract if the Vendor states this expressly in writing. If the Vendor withdraws from the contract, he can require an appropriate remuneration for the duration of making the goods available for use.
3. In the case of processing of goods to which title is retained, the Purchaser acts on behalf of the Vendor, but without acquiring any claims against the Vendor for the processing. The Vendor's retention of title thus also extends to the products resulting from processing. If goods to which title is retained are processed together with goods owned by third parties, or if the goods to which title is retained are mixed or joined with goods owned by third parties, the Vendor shall acquire co-ownership of the resulting products in the ratio of the invoice value of the goods to which title is retained to the invoice value of the goods owned by third parties. If the joining or mixing takes place with a main item belonging to the Purchaser, the Purchaser herewith already assigns his property rights to the new object to the Vendor.
4. The Purchaser is obliged to keep the goods to which the title is retained carefully for the Vendor, to maintain and repair them at his own cost, and to insure them at his own cost against loss and damage within the framework due from a diligent businessman. He herewith assigns his rights under insurance contracts to the Vendor in advance.
5. As long as the Purchaser satisfies his liabilities to the Vendor properly, he shall be entitled to dispose of the goods to which title is retained in normal business operations; however, this shall not apply if and in as far as a prohibition of assignment regarding the purchase price claim is agreed between the Purchaser and his customers. The Purchaser is not authorised to assign, transfer ownership or enter into other burdens. When selling the goods on, the Purchaser shall make transfer of ownership dependent on complete payment for the goods by his own customers.

6. The Purchaser herewith assigns all claims arising from onward sale of goods to which title is retained with all incidental and security rights including bills and checks in advance to the Vendor to secure all the Vendor's claims against the Purchaser arising from the business connection. If goods to which title is retained are sold together with other goods at an overall price, the assignment shall be restricted to the pro-rated amount in the Vendor's invoice for the goods to which title has been retained that are also sold. If goods are sold for which the Vendor has co-ownership in accordance with Section 3, the assignment shall be restricted to that part of the claim that corresponds to the Vendor's co-ownership share. If the Purchaser uses the goods to which title is retained for refining of items owned by third parties against payment, he shall assign his claims for remuneration against the third party to the Vendor for the aforementioned security purpose. As long as the Purchaser satisfies his payment obligations on time, he shall be entitled to collect the claims from onward sale or refining himself. He is not authorised to enter into assignments or pledges of any kind.
7. If the Vendor considers the realisation of his claims to be jeopardised, the Purchaser shall on request notify his customers of the assignment and hand over all necessary information and documents to the Vendor. The Purchaser shall notify the Vendor promptly of all attachments of third parties concerning the goods to which title is retained and assigned claims.
8. If the value of the securities to which the Vendor is entitled exceeds the Vendor's claims against the Purchaser to be secured by more than 10 %, the Vendor is obliged to release securities at the request of the Purchaser. The selection of the security to be released shall be taken by the Vendor.

IX. Compensation for damage

1. Claims for damages by the Purchaser - of an extra contractual nature too - are ruled out in cases of minor negligent infringement of obligations on the part of the Vendor, senior executive staff and other agents of the Vendor, unless the infringement affects an obligation of major importance for achieving the purpose of the contract.
2. The Vendor shall only be liable for direct damage and for damage not foreseeable at the time the agreement was entered into if there is gross negligence on the part of the Vendor or a senior employee of the Vendor.
3. In the case of § 478 BGB (German Civil Code) claims for damages are ruled out; the Vendor can at his choice perform subsequent fulfillment or new delivery or demand a reduction of the purchase price. Claims for recourse within the framework of § 478 BGB shall become statute-barred two months after fulfillment of consumer claims.
4. In the case of claims for recourse in the delivery chain (§ 478 BGB) the Vendor shall reimburse costs only at the level of the costs incurred by the Purchaser without his mark-up and profit margin.
5. The above restrictions shall not apply for cases of loss/damage arising from injury to life, body or health. Mandatory statutory liability regulations such as e.g. liability for the assumption of a guarantee or the product liability law shall remain unaffected. The liability for wilful and deliberate practices employed shall also remain unaffected.

X. Complaints about defects

1. Complaints about defects shall only be considered if they are submitted without delay in writing, no later than fourteen days after arrival of the goods, with submission of vouchers, samples, packing slips and details of the invoice number, invoice date and the marks on the packing.
2. In the case of concealed defects the written complaint must be submitted immediately after ascertainment of the defect, but no later than five months after arrival of the goods; this shall not affect the period of statutory limitation. The burden of proof for this being a concealed defect rests with the Purchaser.
3. Goods forming the subject of complaint may only be returned with the express agreement of the Vendor.

XI. Rights of the Purchaser in the case of defects

1. The Purchaser's claims in the case of defects are restricted to the right of subsequent fulfillment. If the Vendor's subsequent fulfillment fails, the Purchaser can demand a reduction of the purchase price or at his choice withdraw from the contract. Claims for compensation under Section IX shall remain unaffected by this. The Purchaser's claims for the costs incurred for the purpose of subsequent fulfillment, in particular transport, travel, work and material costs are ruled out in as far as the expenses are increased because the subject of delivery has been subsequently taken to a place other than the branch of the ordering party, unless this transport corresponds to the purpose for which the goods are to be used.
2. If the warranty represents recourse by the Purchaser after claims have successfully been filed against him in accordance with the provisions of consumer goods purchase, claims for recourse on the basis of the regulations governing consumer goods purchase shall not be affected. Section IX applies for the claim for compensation.
3. The Purchaser is obliged to notify the Vendor promptly as soon as he knows of any case of recourse occurring in the delivery chain. Legal claims of the Purchaser for recourse against the Vendor only exist in as far as the Purchaser has not reached any agreements with his customers extending beyond the legal claims for damages.
4. The agreement of a guarantee must be in written form to be valid. A declaration of guarantee shall only be effective if it describes the content of the guarantee and the duration and geographical scope of the guarantee protection sufficiently.

XII. Period of limitations

In the case of § 438 Abs. 1 No. 3 BGB (German Civil Code) claims based on defects shall become statute-barred one year after commencement of the statutory period of limitations. In the case of § 438 Para. 1 No. 2 BGB they shall become statute-barred two years after commencement of the statutory period of limitations. Compulsory statutory regulations on periods of limitation and liability such as e.g. liability on assuming a guarantee, liability for deliberate and grossly negligent acts, for injuries to life, health or bodily harm, infringement of major contractual obligations, liability under the Product Liability Act and the regulations governing purchases of consumer goods shall remain unaffected.

XIII. Nature of the goods, technical consultancy, use and processing

1. The nature of the goods is fundamentally considered to be only the nature described in product descriptions, specifications and labelling by the Vendor. Public statements, praising or advertising do not represent data concerning the nature of the item sold.
2. The Vendor's advisory services on technical applications supplied orally, in writing and on the basis of testing are provided to the best of the Vendor's knowledge and belief, but only apply as non-binding hints, as regards any protected rights of third parties too, and do not release the Purchaser from his own obligation to check the products supplied by the Vendor for their suitability for the intended processes and purposes. The application, use and processing of the products take place outside the Vendor's opportunity to monitor these and therefore lie exclusively within the sphere of responsibility of the Purchaser.

XIV. Trademarks

1. Substitute products may not be offered or sold instead of the Vendor's products with reference to the Vendor's products.

XV. Law applicable, interpretation of clauses, etc.

1. The law of Germany applies. The application of the uniform laws on the international sale of goods and on the entry into international purchase contracts for goods - both of 17 July 1973 - and of the UN Convention on Contracts for the International Sale of Goods of 11.04.1980 is ruled out.
2. Standard commercial clauses are to be interpreted in accordance with the relevant Incoterms.
3. If it is agreed that the Vendor shall bear customs duties and import charges of the country of destination, any increases of such dues entering into force between issue of the confirmation of order and delivery of the goods shall be for the account of the Purchaser. The Purchaser shall also bear any other charges, taxes and costs connected with the contract of sale.

XVI. Place of fulfillment and venue; validity clause

1. The place of fulfillment for delivery is the relevant place of dispatch, and for payment is Oldenburg i. O.
2. The venue for both parties is Oldenburg i. O. Furthermore, the Vendor is entitled to enforce his claims at the general venue responsible for the Purchaser.
3. In the event that any individual clauses of these General terms and Conditions of Business are invalid in whole or in part, this shall not affect the validity of the remaining clauses or parts of such clauses. The parties shall replace any invalid ruling by a valid ruling that comes as close as possible to the intended economic purpose of the invalid ruling.

XVI. Privacy

1. We comply with our duty to inform according to Article 13 GDPR and refer you to our current privacy policy, which you can view at www.buefa.de/privacy.

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