

# **General Terms and Conditions of Sale**

**BADER GmbH & Co. KG, Metzgerstrasse 32 – 34, 73033 Göppingen, Germany**

## **1. Scope**

1.1 Sales, services and quotations are governed solely by the following terms and conditions of sale and payment. They also apply to all future business relationships without the need for separate express agreement. The terms and conditions are deemed accepted upon submission of an order or, at the latest, acceptance of delivery of the goods. We do not recognize counter-confirmations by buyers with reference to their own terms and conditions of business and purchase. These General Terms and Conditions of Sale only apply for corporations as defined in Section 310 (1) German Civil Code (BGB), public-law entities or public-law investment funds.

1.2 All agreements entered into by Seller and Buyer to execute this contract must be recorded in writing in this contract.

## **2. Quotation and contract execution**

2.1 Quotations are without obligation and non-binding. Orders and purchase orders only become binding once they have been confirmed in writing by Seller (contract execution). The written form requirement is waived for contracts executed by data transmission. Verbal agreements or commitments are only valid if confirmed in text form by Seller (cf. Section 126 b BGB).

2.2 Dimensions, weights, colors and other performance data are only binding if expressly agreed in writing.

2.3 Supplementary verbal agreements or assurances extending beyond the content of a contract executed in text form are not valid.

2.4 If standard commercial clauses are agreed, Incoterms rules of interpretation, as amended, shall apply unless specified otherwise below.

2.5 Seller retains title and copyright to all samples, drawings and other information in physical and non-physical – including electronic – form. They may not be made available to third parties and must be returned to Seller without delay at the latter's request.

### **3. Prices / Packaging / Shipping**

3.1 Unless otherwise indicated, Seller is bound to the prices in its quotation for 30 days from submission of said quotation. If orders are submitted after this period, the prices listed in the order confirmation apply. Invoicing is based on the dimensions and weights established at Seller's shipping point. Delivery of up to 5% more or less of the order quantity is permissible. Additional deliveries and sales will be billed separately. If prices – especially for raw materials – increase for whatever reason, Seller is entitled to renegotiate prices with Buyer, such negotiations to be conducted in good faith.

3.2 Prices are exclusive of the statutory sales tax applicable at the time of delivery and, unless otherwise agreed, apply ex works (EXW) Göppingen. Consignments are shipped at Buyer's expense and risk. Seller does not purchase transport insurance.

3.3. Packaging is charged at cost and credited to the present value if returned carriage paid. Seller is free to choose the packaging unless the customer stipulates a specific type.

3.4 In all instances of delayed delivery for reasons beyond Seller's control (see 4.2 below), Seller is entitled to raise the agreed prices if wages, salaries, raw material prices or other manufacturing costs have meanwhile increased.

3.5 Buyer is only entitled to offset if its counter-claims have been established in a court of law, are undisputed, or have been acknowledged by Seller. Buyer is only entitled to assert a right of retention insofar as its counter-claim relates to the same contract and has been established in a court of law or is undisputed.

### **4. Delivery**

4.1 Delivery dates and deadlines are always approximations and not binding unless expressly agreed otherwise in writing. Delivery dates and deadlines have been adhered to if the delivery item has left Seller's works or readiness for shipping has been notified prior to expiry.

4.2 Even if dates and deadlines have been bindingly agreed, Seller cannot be held liable for delays in deliveries and performance for reasons of force majeure or events that make it difficult or impossible for Seller to deliver (including, in particular, military conflict, domestic upheaval, terrorism, strikes, lockouts, shortage or raw materials and means of transport, official orders, traffic hindrances, etc.), including delays occurring at Seller's suppliers or their subcontractors. In such instances, Seller is entitled to withdraw from all or part of the contract without

this establishing any rights for Buyer to claim damages or subsequent delivery. Alternatively, Seller can choose whether to postpone delivery by the duration of the hindrance plus a reasonable ramp-up period or to withdraw from the contract in part or whole with respect to the unfulfilled portion. Buyer is not entitled to withdraw from the contract nor to claim damages. Seller can only cite such circumstances if it notifies Buyer without delay.

4.3 If the hindrance persists for more than two months, Buyer is entitled to set a reasonable period of grace before withdrawing from the contract with respect to the unfulfilled portion. Any further claims by Buyer are excluded unless the delay is due to gross negligence, at least, on Seller's part.

4.4 Seller is allowed to deliver partial quantities and partial performance at any time.

4.5 Seller's adherence to its delivery and performance obligations is conditional upon Buyer duly honoring its commitments in good time.

4.6 If Buyer delays acceptance, or handover or shipment is delayed, for reasons within Buyer's control, Seller is entitled to compensation of the damage it has suffered. As soon as acceptance default occurs or handover or shipment is delayed for reasons within Buyer's control, the risk of potential deterioration and loss transfers immediately to Buyer.

## **5 Transfer of risk, acceptance**

5.1 Risk is transferred to Buyer as soon as a consignment has been handed over to the person responsible for carriage or has left Seller's warehouse to be shipped. The same applies for partial deliveries. If shipment proves impossible for reasons beyond Seller's control, risk is transferred to Buyer with notification of readiness for shipment. Buyer bears the risk even if shipment is prepaid.

5.2 If acceptance has been agreed, it must be performed without delay on the agreed date, or as soon as Seller notifies readiness for acceptance. Buyer cannot refuse acceptance on grounds of a minor defect as long as Seller exceptionally acknowledges its duty to remedy the defect. An acceptance report must be compiled with details of the time, place, any defects detected on the delivery item and any other remarks. The report must be signed by both Seller and Buyer.

## **6 Warranty**

6.1 Seller warrants that the products are free from manufacturing and material defects. Information provided by Seller about the properties of the delivery item must not be construed as assured properties or guarantees as defined in Section 443 BGB.

6.2 The warranty period commences on the day of delivery. Buyer undertakes to notify Seller in writing of any defects without delay but at the latest within 8 days of receipt of the goods. Buyer is only entitled to assert claims on the grounds of material defects if it has duly complied with its duties of examination and notification as set out in Section 377 HGB. Concealed defects must be notified in writing to Seller as soon as they are discovered.

6.3 If complaints of defects are justified, Seller can choose whether to replace or rework the goods. Any other warranty claims on Buyer's part are excluded. Multiple rework attempts are permissible.

6.4 If, after a reasonable period, rework fails to produce the desired result, Buyer can choose whether to reduce payment or demand rescission of the contract. Claims for damages on grounds of defective delivery are excluded unless due to willful or gross negligence on Seller's part. If a Buyer's complaint of defect subsequently proves to be willfully or gross negligently unjustified and Buyer was aware of the same prior to filing the complaint, Buyer must compensate Seller for all related expenses and damages suffered.

6.5 Compliance with authenticity is governed by the relevant specification agreed in writing.

6.6 Warranty claims against Seller can only be directly asserted by Buyer; they cannot be assigned.

6.7 The provisions outlined above are conclusive – to the extent legally permissible – with regard to product warranty and exclude any further warranty claims of any nature.

6.8 The time bar period for Buyer's rights with regard to defects is 12 months from delivery of the delivery item to Buyer.

## **7 Payment**

7.1 The payment terms listed on the invoice apply. Unless otherwise agreed, Seller's invoices are payable 30 days from date of invoice, net. Disregarding any other instructions of

Buyer, Seller is entitled to first assign payments to older debts of Buyer. Seller will notify Buyer of what it has offset. If costs and interest have already accrued, Seller is entitled to first offset payment against the costs, then the interest, and finally the principal.

7.2 Payment is only deemed to have been effected when the amount is at Seller's disposal. If checks are issued, payment is only deemed to have been effected once the checks have been cashed.

7.3 If Buyer is late with payments owing on current or earlier contracts, acceptance issued by Buyer is rejected, attachment is served upon Buyer, or Buyer's credit rating proves unfavorable, Seller is entitled to choose whether to withdraw from the contract with respect to the unfulfilled portion or to require cash on delivery or collateral for acceptance. A prior period of grace must not be granted. In such instances, all amounts owing by Buyer to Seller become due for payment immediately. If Buyer is late with payment, Seller is entitled to charge interest from the relevant date onwards as per Section 247 BGB of 9% above the relevant base rate as set by the European Central Bank and published by Deutsche Bundesbank as lump-sum compensation as per Section 288 (2) BGB. If Seller can provide evidence of greater damage, it may also demand more compensation. The aforementioned is without prejudice to Seller's right to assert other claims, in particular higher rates of default interest as per Section 288 (3) and (4) BGB.

7.4 Buyer is only entitled to offset, retain or reduce payment – even if it has asserted claims on grounds of defects, or counter-claims – if said counter-claims have been established in a court of law or are undisputed.

## **8 Retention of title**

8.1 Goods are supplied subject to retention of title as per Section 449 BGB with the extensions outlined below.

8.2 Goods remain the property of Seller until all outstanding claims (including any and all outstanding current account balances) owing both presently and in future to Seller for whatever legally permissible reason have been settled by Buyer. Seller undertakes and may choose whether to transfer title to the goods or to release the other collateral listed below at Buyer's request if their value sustainably exceeds the claims by more than 20%.

8.3 Any acquisition of title by Buyer to the reserved goods is excluded as per Section 950 BGB if the reserved goods are processed into a new product. Such processing is always on behalf of Seller, as the manufacturer, albeit without any obligation for Seller. If Seller's (co-)ownership ceases as a result of combining, Buyer's (co-)ownership of the unified product must be proportionately (invoice value) transferred to Seller. Buyer safeguards Seller's (co-)ownership free of charge. Goods (co-)owned by Seller are referred to as Reserved Goods below.

8.4 Buyer is entitled to process the Reserved Goods during its normal course of business and to sell the same as long as Buyer is not in default. Buyer agrees to insure the Reserved Goods adequately against fire and theft. Assignments or transfers by way of security are not permissible. Buyer agrees hereby to assign as security to Seller the full amount of all claims (including any and all outstanding current account balances) arising from the resale without or after processing to one or several customers or from any other legal basis (insurance, unlawful act). Seller authorizes Buyer revocably to collect claims assigned to Seller in Buyer's own name on Seller's behalf. The aforementioned collection authority of Buyer is without prejudice to Seller's authority to collect. Seller will, however, not collect any claims itself as long as Buyer continues to duly honor its payment obligations. At Seller's request, Buyer will provide the names of the debtors relating to the assigned claims addressed in this section and will notify the debtors of the assignment. Buyer agrees to provide Seller at any time with all requested information about the Reserved Goods or claims assigned to Seller.

8.5 If third parties seize the Reserved Goods or claims of Seller, particularly if attachments are served, applications for settlement or insolvency proceedings or execution are filed or such proceedings opened, regardless of whether the application was filed by Buyer or another creditor, Buyer agrees to divulge that the property belongs to Seller and to notify Seller without delay so that the latter can assert its property rights. Buyer is liable for compensation insofar as the third party is not capable of reimbursing Seller's related court or out-of-court costs.

8.6 Breaches of contract by Buyer – especially payment default – entitle Seller to take back the Reserved Goods or, if appropriate, to demand assignment of Buyer's claims for surrender vis-à-vis third parties. Taking back or seizure of the Reserved Goods by Seller does not constitute withdrawal from the contract.

8.7 If application is filed to open insolvency proceedings, Seller is entitled to demand full payment in advance of supplying goods or performance or incremental payment for each delivery or performance.

8.8 Insofar as Seller's reservation of title is not legally enforceable or not legally enforceable within its intended scope in the foreign country of destination of the delivery items or Reserved Goods, Buyer agrees to cooperate in furnishing collateral whose effect comes closest to this reservation of title.

## **9 Limitation of liability**

9.1 Indemnity claims from positive breach of obligation, negligence in contract execution or unlawful act against both Seller and Seller's agents are excluded unless caused by willful or gross negligence. The same applies to claims for damages on grounds of non-performance, albeit only insofar as compensation is demanded for indirect damages or damages caused by defects, unless liability is established by a guarantee designed to safeguard Buyer against the risk of such damage. Any and all liability is limited to the foreseeable damage at the time of contract execution. The aforementioned is without prejudice to Seller's liability under compelling legal regulations, e.g., pursuant to product liability laws and other claims arising from the producer's liability.

## **10 Data protection**

10.1 Buyer consents to Seller digitalizing, storing and using for its own purpose all Buyer's data needed to conduct the business relationship and all contracts agreed with Supplier. The provisions of the European GDPR apply.

## **11 Applicable law / court of jurisdiction / partial invalidity**

11.1 These terms and conditions of business and all legal relations between Seller and Buyer are subject to the laws of the Federal Republic of Germany. Application of The Hague Convention relating to a Uniform Law on the International Sale of Goods, the UN Convention on Contracts for the International Sales of Goods (CISG), laws governing conflicts of interests and any other conventions is excluded.

11.2 Place of performance for Seller's deliveries and performance is Göppingen. Insofar as Buyer is a full merchant as defined in the German Commercial Code (HGB), a public-law entity or public-law investment fund, Göppingen is the sole court of jurisdiction for any and all disputes arising directly or indirectly in connection with the contractual relationship, and for claims relating to bills of exchange or checks.

11.3 If one of the provisions of these terms and conditions of sale and payment or of another agreements is or becomes invalid, this shall not affect the validity of the remaining provisions

or agreements. In such cases, the parties agree to replace the invalid provision with an effective one that most closely serves the commercial intention.

**Valid from October 2018**

**General Terms and Conditions of Sale**

D5/476-18

D5/503-18