



# TERMS AND CONDITIONS OF SALES AND DELIVERY

# BRUSE

## I. General / scope

1. The following Terms and Conditions of Sales and Delivery provide the basis for all of our offers, orders, deliveries, and services. In addition, they apply to all future business relations, also when there is no repeat, explicit agreement to these.

2. The business conditions of our customers are acknowledged only to the extent that they coincide with our Terms and Conditions of Sales and Delivery. In individual cases, they may provide the basis for the affected contract or service following our explicit consent issued in writing.

3. Our Terms and Conditions of Sales and Delivery apply only to companies as defined under § 14, 310, Paragraph 1 BGB (German Civil Code).

4. Orders and conclusions of contracts via our ordering portal are only possible after registration. Registration is not completed until we have verified and approved it. For registration only entrepreneurs as defined by § 14 BGB are permitted, i.e. persons acting in terms of their commercial or self-employed function when concluding the prospective legal transaction via our ordering portal. Consumers as defined by § 13 BGB, i.e. persons who want to conclude legal transactions via our ordering portal for purposes, which can be neither mostly assigned to their commercial nor to their self-employed professional function, are excluded from registration

## II. Offer - documents - conclusion of contract

1. Our offers are subject to confirmation and are without commitment.

2. Our offers and the prices specified in our catalogues, lists, etc., are also without commitment for delivery periods longer than 4 months. Also in the case of purchase orders on call and contracts for delivery by instalments (whereby the goods and/or services are delivered later than 4 months following order placement, either at the ordering party's request or as

set down in the contract), we are entitled to pass on to the ordering party all material and labour cost increases as incurred by and for the purpose of offsetting these price increases between the conclusion of contract and delivery to the ordering party. Cost estimates are without commitment. No responsibility is accepted for the correctness of the offer.

3. The details and descriptions of services in the documents, freely available catalogues, lists, etc., used for our offer are the usual approximations based on the best possible assessments in this business sector and are therefore without commitment.

Commitment is justified exclusively when this has been declared explicitly or is understood as such in the order confirmation. On the other hand, commitment may not be justified on the basis of misunderstandings, grammatical errors, and/or miscalculations.

4. Our prices are in EUR ex works plus the statutory VAT applying in each case. Purchase orders with a net goods value less than EUR 100.00 are subject to our prior acceptance and are billed together with a processing fee of EUR 10.00.

5. Our offers and their appendices may be made accessible to third parties only with our consent.

## III. Packaging, costs, shipping, passing of risk

### 1. Packaging

The goods are placed in the usual packaging for this business sector, and the packaging billed at cost price. The freight paid return within 4 weeks of reusable packaging material in perfect condition is reimbursed at 2/3 (two thirds) of the invoice value. A higher reimbursement is granted solely for permanently reusable packaging material.



## 2. Shipping

If not stipulated specifically or agreed otherwise, the shipping mode is selected at our own discretion. In this case, we accept no responsibility for the most cost-effective transport option. Goods are shipped to the account and at the risk of the ordering party. Deliveries of a net value greater than EUR 1,000.00 are shipped carriage-free within the German customs borders. On leaving the works, all costs and risks are borne by the ordering party. This also extends to all freight paid deliveries involved in the shipping.

## 3. Passing of risk

a) When goods are shipped, irrespectively at whose costs, the risk is passed to the ordering party as soon as the delivery is sent to the shipping agent, at the latest however when the delivery leaves the works.

b) When goods are ready for shipping, but the shipment or acceptance is delayed for reasons outside of our liability, this risk passes to the ordering party on receipt of the notification that the goods are ready for shipping.

## IV. of payment and consequences of non-compliance, additional charges

1. Our invoices are payable without deduction, postage paid, and free of charges within 30 days following the invoice date or notification that the goods are ready for shipping. On paying within 10 days following the invoice date, the ordering party is entitled to deduct a 2% discount, but only when all preceding invoices have been settled. On violation of settlement dates, we are entitled to charge the statutory default interest in addition to our explicit right to claim any further losses.

2. On the ordering party's failure to observe due dates, we are additionally entitled to deliver only following advance payment or the provision of security, to withdraw from the contract following an appropriate extension, and/or to demand compensation for damages. On substantial deterioration of the ordering party's assets following the conclusion of contract or first coming to our notice at that time, we have the right to refuse our services and to demand from the or-

dering party that the ordering party eliminates all risks to the purpose of the contract by providing adequate security. When the ordering party fails to comply with the demand to provide security within an appropriate period, we are entitled to withdraw from the contract or demand compensation for damages.

3. The ordering party may offset only uncontested or legally established counter-demands against our claims.

## V. Delivery and default in delivery

1. Delivery dates and delivery periods are binding only when they are agreed explicitly and have been confirmed by us in writing. Delivery periods begin either with the written order confirmation or as soon as all the essential performance details have been clarified and both parties are agreed on all of the essential business conditions. The delivery period is deemed observed either when the delivery item has left our works at a time that allows punctual receipt according to the usual shipping conditions or notification has been received that the delivery item is ready for shipping before the expiration of this period.

2. In the event of force majeure or disruptions to our or our suppliers' operations (e.g. as a result of civil commotion, industrial action, lockout) that prevent us temporarily without fault on our part from delivering the item at the agreed date or within the agreed period, the delivery dates or delivery periods are extended by the duration of the disruption to performance caused by these circumstances. When these disruptions lead to a postponement of performance by more than 4 months, both the ordering party and we ourselves have the right to withdraw without deriving from this any claims for compensation.

3. When the ordering party sets an appropriate deadline after we have defaulted, the ordering party is entitled on expiry of this deadline without performance to withdraw from the contract and to demand compensation to the maximum extent as set down in the following Section VIII.



4. When we have defaulted on only part of our performance, the ordering party may not withdraw from the whole contract nor claim compensation on the grounds of failure to comply with the whole contract unless this partial performance does not fulfil the ordering party's interests. In this case, the ordering party bears the burden of proof.

5. The ordering party and the principal are entitled to claims for compensation on the grounds of non-compliance only to the extent regulated under the following Section VIII.

6. a) Provided that we are not responsible for failing to meet promised deadlines and dates or we are in default and hence must pay compensation, our customer may claim, for every full week, compensation to the amount of 3% of the invoice value for the deliveries and services affected by the default, but no more than 15% of the invoice value.

b) The preceding and the following limitation of liability under Section VIII. does not apply when a commercial transaction for delivery by a fixed date has been agreed, the default in delivery is the result of intentional or grossly negligent violations of contract on our part - also extending to our representatives or vicarious agents - or our customer submits a justified claim that the continued fulfilment of the contract can no longer fulfil the customer's interests.

## VI. Acceptance

1. The ordering party is obliged to accept the object of purchase within 14 days following notification of receipt. On failure to accept the object, we may resort to our legal rights.

2. In the case of non-scheduled quantities and purchase quotas, we have set down the latest final acceptance as 12 months following the date of order confirmation when the contract does not specify later purchase times. Non-scheduled goods can be billed from this date when there is no immediate call within 7 calendar days following the date of our written notification of availability. When the above period expires, the risk to performance passes to the ordering party.

3. When we demand compensation, this is 15% of the agreed purchase price. This estimated claim for compensation is higher or lower when we can verify higher losses or the ordering party lower losses.

4. We are entitled to provide partial performance. When we perform partial deliveries and services, we may claim a percentage payment of the purchase price.

5. Partial, additional, and short deliveries are permitted, and special parts and packaging units of catalogue goods are subject to 10%.

6. Under no circumstances may goods - and specifically special makes - be returned unless the ordering party can withdraw effectively from the contract or we have declared our agreement to these returns. Unjustified returns entail compensation to us in the form of a processing fee to the amount of 15% of the purchase price. This estimated claim for compensation is higher or lower when we can verify higher losses or the ordering party lower losses.

In the case of delivery contracts on call, binding quantities must be notified to us by call at least 40 working days prior to the delivery date unless otherwise agreed. Additional costs caused by a delayed call-off or subsequent changes to the call-off with regard to time or quantity by our partner shall be borne by him; our calculation shall be decisive in this respect.

## VII. Liability for defects

1. The customer's claims on the grounds of defects require that the customer has fulfilled duly its mandatory obligations to investigate and report defects as set down under § 377 HGB (German Commercial Code). Concealed defects must likewise be reported in writing immediately on their discovery, but no later than 12 months after the passing of risk or, when control means are unavailable, no later than the above period following receipt or delivery.



2. When deliveries that are the subject of complaints have been processed further without written consent or without good cause verified by either the principle or the ordering party, or when the ordering party itself has attempted repairs, the ordering party loses all of its rights concerning material defects.

3. In the event of complaints, we have the right to examine and rectify the defect or replace the affected defect goods as we see fit. When we choose to rectify the defect, the ordering party may claim further legal rights only when the ordering party has granted us this rectification option for a second time. When we have undertaken a quality guarantee, the ordering party is entitled to make unrestricted use of its legal rights concerning material defects.

4. When rectification or replacement as set down in the above paragraph (VII. 3) fails, the ordering party may reduce the purchase price or withdraw from the contract. Compensation on the grounds of a material defect may be claimed only in accordance with the following Section VIII.

5. In the event of material defects, there are no legal rights when this defect is trivial or can be put down to failure to observe the operating, maintenance, care, or installation instructions; to improper use, incorrect handling, natural wear, or poorly executed installation; or to improperly used piping or piping that does not fulfil the acknowledged rules and regulations.

6. When the handled goods are mass-produced parts and/or bulk products, it cannot technically be safeguarded that all parts comply with the pertinent rules and regulations. In this respect, all rights and claims on the grounds of material defects and all claims for compensation are ruled out when 97% of the handled goods in total comply with the pertinent rules and regulations. The ordering party is obliged to take into account possible rejects or defect quantities in the delivered number of blanks.

7. The rights of the ordering party as part of commercial recourse under §§ 478 and 479 BGB (German Civil Code) remain unaffected.

## VIII. Compensation - limitation of liability - withdrawal

1. The ordering party may not submit any claims for compensation, irrespectively of the legal ground. This applies in particular to compensation claims arising from culpa in contrahendo, violations of duties listed in the contract, and unlawful acts for the compensation of material defects.

2. Excluded from the above limitation of liability are, however, claims for compensation submitted by the ordering party on the grounds of

- a) non-accidental injuries to life, limb, or health,
- b) intentional or grossly negligent breaches of duty,
- c) non-accidental violation of an essential contractual obligation,
- d) regulations under the product liability laws.

3. In the cases described under 2 b) and c), our liability to pay compensation is limited to the foreseeable, typically occurring damage, with the exception of intentional breaches of duty.

4. When our liability is excluded or limited under Paragraphs 1 and 3, this also extends to our representatives and vicarious agents.

5. When we are responsible for a breach of duty, the ordering party is entitled, under the legal prerequisites, to withdraw from the contract when justification is not based on a defect in the delivery item itself.

## IX. Statute of limitations

The limitation period for the ordering party's / buyer's claims and rights on the grounds of material defects as set down under the above Sections VII. and VIII. is one year when this is not defined otherwise by law. This does not apply to the delivery of an item that has been used in a structure in accordance with its design purpose and that has caused this structure's defectiveness. In this case, the legal warranty periods apply.



## X. Industrial property rights, tools, models, and drawings

1. When deliveries are rendered on the basis of drawings, models, or other details provided by the ordering party, the ordering party bears the responsibility for the correctness and for the assurance that these do not violate third party industrial property rights. The ordering party must exempt us from all claims filed by a property right holder.

### 2. Tools

a) The tools and fixtures created to manufacture the ordered goods remain our property, irrespectively of the cost components calculated. Tool cost components are billed separately from the value of the goods. These must be paid when the type sample is sent or, when a type sample has not been requested, when the first consignment is delivered.

b) We bear the costs for repairs, servicing, and proper storage and the risk of tool breakage. Accordingly, there is no pay-out.

c) In the case of tools specific to the buyer, we are obliged to use these only for deliveries to the ordering party.

d) We are obliged to place the tools in storage for 3 years following the last delivery to the ordering party. When the ordering party informs us before the end of this period that orders will be placed within an additional year, we are obliged to extend the storage period for this time. Otherwise, we may dispose of the tools as we see fit.

## XI. Reservation of ownership

1. We reserve ownership of the delivery item (goods subject to retention of title) until all of our receivables from the business relationship with the ordering party, including future receivables, also from contracts concluded later or simultaneously, have been paid. In the case of a running account, the reserved ownership and all rights serve as security for our total balance claim including interest and costs. The ordering party must notify us immediately of any distraints or other third party interventions.

2. The ordering party is entitled to process and resell the delivery item in the proper course of business. This authorisation

ends when the ordering party defaults on or ceases payment or when the ordering party's assets become the subject of composition or insolvency proceedings. The ordering party is obliged to resell the item under the reservation of ownership only and to ensure that the receivables from the retail are passed to us. Reselling also extends to the use of items subject to retention of title for the fulfilment of contracts for materials and/or work. The ordering party is not entitled to dispose of the items subject to retention of title in any other fashion, specifically seizure or transfer of ownership as security on debts. Moreover, the ordering party is forbidden to assign receivables from the transfer of our items to third parties.

3. After processing the items subject to retention of title, the ordering party does not acquire ownership of the new item as defined under § 950 BGB (German Civil Code). This processing or conversion is performed for us, but without obligation to us. The processed goods are deemed items subject to retention of title.

4. When items subject to retention of title are processed, combined, and/or mixed with other goods, we are entitled to co-ownership of the new item in the ratio of the invoice value of the item subject to retention of title to the invoice value of the other goods used. When our ownership expires as a result of combining, mixing, or processing, the ordering party transfers to us at that point in time its ownership and expectant rights on the new stock or item to an extent equalling the invoice value of the item subject to retention of title or, when processed, in the ratio of the invoice value of the item subject to retention of title to the invoice value of the other goods used, and keeps these for us free of charge. Our co-ownership rights apply as items subject to retention of title.

5. The ordering party's receivables from the reselling of the item subject to retention of title are assigned to us at this time. Like the item subject to retention of title, they serve to the same extent as security.

6. When the ordering party resells the item subject to retention of title together with other goods, the receivables from the reselling is assigned to us in the ratio of the invoice value



of the item subject to retention of title to the invoice value of the other goods. When goods are resold in which we have a co-owner's share, the ordering party assigns to us that part of the receivables corresponding to our co-owner's share. When the ordering party sells these receivables as part of non-recourse factoring, requiring our permission, the ordering party assigns to us the substitute receivables from the factor.

7. At our request, the ordering party is obliged to provide us with an exact breakdown of its receivables together with the buyers' names and addresses, to announce the assignment to its buyers, and to submit to us all of the information needed to claim the assigned receivables. As soon as the ordering party defaults on payment or the ordering party's assets start to deteriorate, the ordering party authorises us to inform the buyers of the assignment and to collect the receivables ourselves. We may demand that our authorised agent view the ordering party's accounting for the purpose of examining the stocks for the assigned receivables. The ordering party must provide us with a breakdown of the remaining items subject to retention of title.

8. When the value of the available security exceeds the total secured receivables by more than 20%, we are obliged at the ordering party's request to release securities of our choosing to the required extent.

9. When the goods subject to retention of title are paid for with bills of exchange, cheques, etc., payment as set down in Section IV. is deemed rendered only when the ordering party has made a secured payment. We accept cheques only on account of performance. Payments that are made against the submission of a bill of exchange we have issued are deemed rendered only when we have been exempted from all recourse on a cheque and/or bill of exchange. Irrespectively of any further security rights we may have, the securities granted to us remain valid until this time.

10. All of the costs incurred during the repossession of the delivery item - this does not constitute a notice of withdrawal - are borne by the purchaser. We are entitled to dispose of the repossessed delivery item on the open market.

## XII. Place of performance, venue, applicable laws

1. The place of performance is the location of our supplying plant.
2. In the case of contracts with merchants and legal entities, the venue is the location of our principal office.
3. All deliveries and services are subject to German law, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## XIII. Severability clause

When terms or conditions herein or in other agreements should be or become invalid, this will not affect the validity of the remaining terms and conditions herein. The parties to the contract are obliged to replace the invalid term or condition with a term or condition that approaches as closely as possible the economic effect of the invalid term or condition.

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