



General Business Conditions

I. Application

1. The present general business conditions apply to the entire contract – even to any future contract – regarding the supply or any other services included in these business contracts and those involving work and the supply of materials. This also applies whenever the buyer has provided his own different general business conditions. Nor are the buyer's conditions recognized when we do not expressly contradict them, after they are put before us.
2. For us, oral agreements are contractual only when we certify them in writing.
3. Diverging and supplementary conditions will need to be drawn up in writing.
4. For assembly or engineering services, our hourly invoicing rates, which are valid and presented separately, are applicable.

II. On offers and conclusions of contracts

1. Our offers are variable. Oral agreements and assurances from our employees are contractual only by means of our written certification.
2. The information contained in these folders, price lists or in documents that are part of an offer are not contractual, insofar as they are not expressly designated as contractual in the confirmation of order.
3. In particular, for our part, they contain explications as a function of our offer (ex. descriptions of services, the reference to DIN standards, etc.), with doubts as to the non-existence of surety. The surety requires an explicit written statement on our part.
4. We do not assume any purchasing risks. We are allowed to terminate the contract, insofar as we have not received the delivery item, despite a contract previously concluded by us. Our liability for deliberate transgression of duty or for negligence, pursuant to section XI of these conditions, remains intact. We will immediately inform the buyer regarding the non-availability of the delivery item in due time. Should the buyer wish to terminate, he may exercise his right to immediate termination. In the event of termination, we will immediately reimburse the buyer for the consideration that has already been provided.
5. For used equipment being offered, if it has not been manufactured by BEAR Mühlen und Behälter GmbH, we will not assume the warranty with regard to the properties, the information and services provided by the original manufacturer.
6. Except for written agreements stating otherwise, used equipment is sold "as is" with the exclusion of any warranty.

III. Prices

1. Our prices are understood to be in-store, net payment, ex factory, plus shipping and sales tax. Any discrepancy between the agreements shall be expressed in writing.
2. Prices and conditions shall apply according to the valid price list upon completion of the deal.
3. If more than six weeks have elapsed since completing the deal when there are changes to the prices of services or other costs contained in the agreed-to or newly resulting prices, we are allowed to adjust prices on the corresponding range. This also applies when, by virtue of the public legislation or edition, non-recognizable supplementary costs result, at the conclusion of the contract.
4. We are allowed to calculate the manufacturer's supplement, valid for alloys, to be paid by the buyer on the day when we are given the provision.

IV. Carrying out provisions, delivery deadlines and scheduling

1. Our delivery commitment is subject to punctual, suitable and prior provision by the supplier. This does not apply when an inappropriate or delayed supply or non-supply is caused by us.
2. Mandatory delivery scheduling (delivery lead time) shall be expressly agreed to, in writing, as such. An agreed-to delivery lead time begins as of the start of access to our acknowledgement of order by the customer; still, this shall not occur before the provision of information, technical data and documents to be given to the customer, or prior to the first agreed-to installment.
3. At the conclusion of the contract, changes or extensions agreed to with regard to the original extent of the order prolongs or defers the original delivery lead time or scheduling.
4. In order to achieve compliance with the delivery scheduling, the date of the ex factory delivery or in-store pick-up shall prevail. Upon notice of the availability for shipment, this applies as being complied with, even if the goods cannot be shipped on time without us being to blame for that.
5. In the event of delays in delivery, the buyer shall set a reasonable supplementary deadline with us. Only after it unsuccessfully expires can the said buyer thus terminate the contract, when the contract is still not concluded.
6. Subcontracts pertaining to imports may not be eliminated or suspended.

V. Payment/Compensation/Lien of Retention

1. Any delayed payments begin on the invoice date. Payments aimed at meeting our requirements shall be made according to the measures given in the payment conditions we have allowed. Except as otherwise agreed to, payment shall be made within 14 days after the date when the invoice was issued without a discount.
2. Except as otherwise agreed to, advance payment of used equipment shall be made in its entirety and without a discount, prior to being picked up.
3. The payment shall be made against a receipt, via transfer or by check.
4. In the case of transfers to a bank account we have specified, as well as with payments by check, such payments become valid only when they are unconditionally credited to our account.
5. If the buyer is late with a partial or total payment, in the business relation, as of the date in question we are allowed to calculate the interest at the borrowing interest rates of commercial banks, respectively applicable, but at least 8 percentage points on the corresponding base interest rate, pursuant to § 247 of the German Civil Code, as well as an overall amount that includes administrative fees of € 30 plus the corresponding sales tax at the legal rate. This does not apply when the customer justifies slight damages. Conversion of a supplementary damage to one that is valid remains subject to our approval.
6. If the buyer is over 3 weeks late with a payment, or if this is the result of another reason and doubts as to his solvability, every existing financial obligation the buyer had toward us become immediately payable. Furthermore, because of all the requirements, we are allowed to demand the payment of guarantees, to settle the supplies that are always expected only with an advance payment or with the payment of guarantees, and to forbid the machining, treatment and/or the resale of the goods that are our property or co-property, as well as to demand the return thereof.
7. Compensations on the part of the buyer are excluded, unless the claim is legally established or recognized by us.
8. Payments (including partial and advance payments) are always used for settling the longest-standing debt and the accrued interest on the said debt, as well as an overall amount that includes administrative fees.
9. In case of eventual defects, a lien of retention does not accrue to the customer, as long as the said lien is not a reasonable proportion of defects and expected costs for complementing supply (in particular, for doing away with the defects). Moreover, the customer is allowed to exercise a lien of retention only when his counter-demand consists of this very contractual relation.

VI. Retention of title

1. All of the goods supplied by us remain in our possession (goods affected by a reservation of title clause) until all our requirements – even future ones – are settled, which accrue to us relative to the buyer, from the business relation.
2. The buyer may resell the goods only under retention of title, until the full sales price has been settled, and only by following the business steps required.
3. The buyer may recover a debt in his name, coming from a resale. He is obliged to pay the recovered amounts, for the value of the goods. This recovery note is no longer valid if cancelled by us, but, at the latest, when there is a delay in payment, if a check is not presented for payment, or when a petition is filed for starting insolvency proceedings. Then, we shall make use of our right of cancellation, when we are aware of the circumstances from which a basic degradation of the buyer's financial situation, thereby calling our right to payment into question. Upon our request, the buyer shall be required to immediately keep his customers abreast of the transfer of the active debt to us, and to convey to us the information and documents required for recovery. Under no circumstances shall the buyer be allowed to subsequently transfer the debt. This also applies factoring companies which are not allowed for the buyer, because of our recovery note.
4. The buyer shall immediately notify us of any seizure or other attacks by third parties. The buyer shall bear all the costs that shall be devoted to suppressing access and to recovering the purchase object, insofar as this cannot be recovered by third parties.
5. If the buyer is late in making a payment or if he does not endorse a check, we will be allowed to reclaim the goods affected by a reservation of title clause. To this effect, when necessary, we will be allowed to hinder the buyer's company or store. Reclaiming the goods does not constitute termination of the contract.
6. We may terminate the sales contract or a part thereof, via a written statement, in the event the buyer is insolvent, when the buyer experiences over-indebtedness, if he defaults on his payments or if he files for insolvency. The right to termination shall be exercised until the filing of insolvency proceedings. The buyer must inform us in the event of insolvency, over-indebtedness or payment default. If the buyer neglects to inform us, as stated above, he shall pay us an overall amount of 5% of the value of the goods. Furthermore, we may forbid the resale, transformation and removal of goods affected by a reservation of title clause. The regulations of the German Insolvency Code remain intact.

VII. Goods, Weights and Measures

1. Goods and measures are determined, pursuant to DIN standards or materials specifications. As long as there is no other DIN standard or no other materials specifications, the corresponding European standards apply, in the absence of such business practices. References to standards, materials specifications or factory testing certificates, as well as information regarding goods, measures, weights and applicability, do not constitute an assurance with regard to properties, as well as few declarations of conformity, manufacturer's declarations and corresponding markings, such as the CE and GS symbols.

VIII. Shipment, Assuming Risk, Packaging, Partial Delivery, Continuous Delivery

1. If it is usual, we perform packaged supplies. Additional expenses with regard to packaging or protection during shipping occur only as part of a separate agreement and the establishment of invoices. The goods that are registered, ready for shipment and pursuant to the contract have to be delivered. Following notice, we are allowed to send the goods, at the buyer's expense, at our choosing, or, as per our own preference, to store them and then invoice them later on.
2. If the buyer accepts the goods on offer, he shall thus fall into arrears. At that moment, the risk is then assumed by the buyer. During the time when the buyer experiences arrears, we will only uphold the notion of deliberate transgression of duty and negligence.
3. As long as we are entrusted with shipping, we shall determine the means and the shipping method as well as the shipper and carrier, pursuant to the generally recognized Incoterms rules. Through the handover of the goods to a shipper or carrier, but, at the latest, at the moment where they leave our factory, the risk is then assumed by the buyer, even the risk of seeing the goods confiscated, at all businesses, even in those instances of free home delivery. If the shipment cannot be made according to the intended method or at the intended location, without it being our fault, after the customer gives notice, we are then allowed to carry out the delivery another way or another location.
4. We are authorized to carry out partial deliveries. Surplus shipments and a lack of shipments of quantities agreed to, which are common in this line of business, are admissible and, consequently, they are broken down.
5. In the case of denominated accounts with continuous deliveries, removals and filing by sorts need to be transferred for around the same partial amounts. Otherwise, we are allowed to proceed with the stipulation according to the lowest-cost estimation. If the contractual amount is exceeded by individual removals, we are allowed, but not required, to deliver the difference. We cannot invoice the surplus at a variable price for removal or delivery.

IX. Warranty

We are exclusively responsible for the differences in the goods delivered by us, relative to the agreed-to or ordinary features, as per the specifications of those General Business Conditions and, particularly, the following regulations:

1. We will have to immediately indicate, in writing, the goods' defects regarding quantity, quality and delivery volume, or within 14 days after delivery. Defects that were unable to be detected within this time frame, even with a painstaking verification, and, after they are detected, they are to be immediately given, in writing, after having been detected, and any eventual machining and treatment shall be immediately suspended.
2. After performing the agreed-to removal of the goods by the buyer, the blame is excluded for defaults that were determined according to the agreed-to method of removal. Complaints regarding defects do not exist only for insignificant deviations of a contractually agreed-to characteristic, or only for an insignificant range regarding utility.
3. For those cases involving justified blame resulting from defects, fixed deadlines, we are allowed to choose between reclaiming the goods being criticized and deliver the goods without any defects or even with improvements. Instead of paying an indemnity, if the buyer prefers to execute compensation or terminate the contract, a setback in the improvement is given only after a second unsuccessful attempt. Mandatory cases of the uselessness of setting a deadline remain intact. Overall, liability for damage caused by defects is excluded.
4. The buyer is obliged to immediately provide us with the opportunity to become convinced with regard to the defect. Upon our request, he has to place at our disposal the goods or the sample being criticized. If the buyer does not follow up on this constraint, all liability ceases.
5. For cases involving improvement or replacement deliveries, we guarantee the same way as for the original delivery or service.
6. Except as agreed to otherwise, in writing, the warranty period for new goods is 12 months. The warranty period commences on the delivery date. This period of limitation and the start of the period also apply to non-compliance with one's obligations, free of material and legal vices.

X. Place of execution, competent court and the law to be used

1. Except as agreed to otherwise, the place of execution for our delivery during ex factory delivery is the BEAR Berlin factory. For all legal disputes resulting from the contractual relation, the competent jurisdiction is where our head office is located, insofar as the buyer is the entrepreneur, pursuant to § 310 par.1 of the German Civil Code or a legal person governed by public law. We may also file a suit against the buyer in his own competent jurisdiction.
2. For all legal relations between the buyer and us, the laws of the Federal Republic of Germany apply; the application of the contract's general conditions is excluded.

XI. Final considerations

1. If a provision of these general business conditions or a provision as part of the special agreements are or become ineffective, that is not valid for the other provisions or agreements.
2. Insofar as there loopholes by virtue of the preceding paragraphs or in the absence of the contractual agreement, the contracting parties hereto pledge to reach an agreement which, give these general business conditions, in legal and economic terms, correspond to what is provided according to the entire contents of the present contract.