

## **§ 1 Scope, terminology and definitions**

- (1) Our Terms and Conditions of Sale and Delivery ("*Terms and Conditions*") do not apply in the case of legal relations with consumers.
- (2) All offers, quotations, deliveries and services to and in connection with an interested party and/or business partner ("*Client*") are subject exclusively to these Terms and Conditions. We do not accept or recognise any Client's terms and conditions of purchase to the contrary. Any orders placed as a result of, or by, Client's terms and conditions of purchase shall be considered to have been placed according to our Terms and Conditions, even if we do not expressly refuse or reject any such order. Clients are deemed to have accepted our Terms and Conditions when they take delivery of our goods or services.
- (3) If, in the case of existing or ongoing business relationships, a Client is already aware of our Terms and Conditions, the Terms and Conditions shall also apply to any future business transactions even without our explicitly referring to them again. A Client is also deemed to be aware of our Terms and Conditions if we have advised him that they are available for perusal on the internet.

## **§ 2 Offers and quotations, quotation documents and order confirmations**

- (1) All offers and quotations are made without obligation. Catalogues, price lists, illustrations, technical drawings, models, details of weights and dimensions – regardless of whether they are in tangible, intangible or electronic form – issued or published in connection with one of our quotations and offers ("*Quotation Documents*") shall only be deemed as approximate indications. They are merely intended to aid the Client's orientation and are in no way to be considered a binding agreement with respect to the quality, specification or warranty conditions of the goods or services described.
- (2) We reserve all relevant intellectual property rights, including the rights covering ownership, exploitation and dissemination of the Quotation Documents, as well as copyright. All documents marked as confidential may only be disclosed or made available to third parties with our prior written consent and – if no binding order is placed – must be returned to us without delay, including any copies made by or provided to the Client.
- (3) All dimensions and weights given in our Quotation Documents are only approximate values. We reserve the right to make alterations without notice.
- (4) We confirm acceptance of the Client's order by sending a written order confirmation. The order is also deemed to have been confirmed in writing when we send an usual email. In addition, the order is also deemed to have been confirmed if we deliver or supply the goods or services ordered. If we confirm the order with any amendment or deviation that will not substantially change the terms and conditions, the contract is deemed to be made and entered into, unless the Client refuses to enter into the contract without any unreasonable delay.
- (5) The Client acknowledges that the circumstances in which the contract was made may change during the term of the contract. The Client expressly affirms that he accepts the risk of change in circumstances and agrees to discharge his obligations hereunder even if the performance of the obligation becomes more difficult for him as a consequence of changed circumstances, irrespective of the materiality of the change.

## **§ 3 Agreement on quality of goods and services, technical support**

- (1) Agreements on quality, i.e. specifications, nature and useful life of goods or services become part of the sales contract only if they are explicitly included in the order confirmation. Additional references we might make to technical standards merely constitute part of the product or service description; in no way do they represent a guarantee of the quality, i.e. any specifications, nature and useful life on our part.
- (2) Submitting our quotation does not constitute the provision of technical support. Data and other information in the Quotation Documents are, in no way, a technical assessment of or judgement on the suitability of the goods or services as a means of fulfilling the requirements of their intended use or uses. We only guarantee the suitability of a product for the purposes of normal use to the extent and within the scope of specified DIN standards.
- (3) If the Client issues us a separate order for technical advisory or consultancy services, we will provide these to the best of our knowledge when executing the contract. Any advice we give the Client about the suitability and uses of our products and services does not release him from his obligation to carry out his own assessment of the suitability and applicability of the products and

services for the Client's intended technical purposes and uses.

#### **§ 4 Client obligations when products are installed in or on buildings or other structures**

- (1) In case of a quotation for the installation of our products in or on buildings or other structures, the Client is obliged to carry out his own checks to ascertain that the building or structure is in good condition, in particular with regard to:  
the compliance with the requirements for dimensional tolerances according to DIN 18202 / in particular: values according to Table 1: dimensional limits line 6; Table 2: angle tolerances line 1; Table 3: evenness tolerances line 7.
- (2) By placing its order, the Client demonstrates and confirms that he has carried out the above-mentioned checks of the building and, in addition, the Client demonstrates that the building is in good condition.

#### **§ 5 Prices, price adjustment, minimum order quantities**

- (1) The prices quoted are for delivery ex works, including handling and loading on our premises; prices do not include the valid rate of VAT applicable on the day of delivery, or charges for packing, shipment and unloading.
- (2) Notwithstanding any express fixed price agreement, we undertake not to raise any quoted price within four weeks following the conclusion of a contract. After expiry of the four weeks, and in the case of unforeseeable cost increases beyond our control (such as wage or salary increases based on collective agreement of the higher instance, or increased material or energy costs, etc.), we reserve the right to make price adjustments.
- (3) Prices are not binding for repeat or follow-up orders.
- (4) If the agreed purchase price is in a currency other than EURO (€), we are entitled to raise or lower our demands of payment in such a way as to ensure that the sum appearing on the invoice has the same value in EURO as if we had applied the exchange rate issued by the Czech National Bank valid at the time the contract was concluded.
- (5) Orders with a value of less than 50.00 EUR (net) can only be processed and delivered against a payment of a supplementary handling charge of 25.00 EUR (plus VAT).

#### **§ 6 Provision of tools, models**

- (1) As a matter of principle, the cost of tools, samples and models necessary for the proper execution of an order will be charged and invoiced separately. The costs will be due and payable no later than on the date of the requested delivery of the pattern/sample or on the date of the initial delivery of the goods, unless other arrangements have been agreed in writing with the Client beforehand.
- (2) Payment for the costs of tools or models does not entitle the Client to demand the surrender of the said tools or models, of which we remain the sole owner and proprietor. In order to facilitate the Client's further orders, we undertake to retain the tools and models for a period of three years after the last delivery. If the Client notifies us in writing at any time before the 3-year period have elapsed that further orders will be placed within the next twelve months following the day of notification, the period will be extended accordingly. In all other cases, we have the right to make use of the tools and models as we see fit.

#### **§ 7 Packing**

Valves and other valuable items are packed on our premises in order to prevent damage during transit. Packing costs and pallet deposit charges (flat euro-pallet = EUR 5.00 + VAT; lattice box pallet = EUR 10.00 + VAT) will be charged to the Client and will appear separately on the invoice (subject to VAT).

#### **§ 8 Delivery, transfer of risk, delivery irregularities**

- (1) The Client is obliged to accept shortfalls or overdeliveries of up to 10 percent in the case of specially produced orders. This shall also apply in the case of individual partial deliveries.

- (2) Unless explicitly agreed otherwise, goods shall be delivered ex works or ex warehouse at the Client's expense.
- (3) When the Client elects to have goods shipped to his premises, we reserve the right to choose a suitable method of carriage and transport route, with due consideration for the best interests of the Client. The Client shall meet any additional costs incurred as a result of his requesting a different method or route.
- (4) When collection of goods by the Client has been agreed, all risk for accidental destruction or accidental deterioration of the goods passes to the Client as soon as he has been informed that the goods are available for collection. Otherwise, the risk is transferred to the Client as soon as the freight forwarder has taken charge of the goods.
- (5) The Client shall accept reasonable partial deliveries.
- (6) The specification of the delivery time or the delivery date is not binding, unless there is a different written agreement. The agreed delivery deadline may be extended by the corresponding period if we are hindered from delivering the goods by the agreed deadline and if the hindrance has an actual effect on our ability to deliver the goods, and is caused by one or all of the following: serious, unforeseen circumstances beyond our control, in particular production delays, delivery delays or missing deliveries from or on the part of our supplier(s), interruption of production due to lack of raw materials, essential utilities or personnel, strikes, lock-outs, transport problems, delays or disruption to traffic, governmental decrees, or force majeure. We will inform the Client without delay when any such circumstances begin or end. If the circumstances result in a delivery delay of more than one month, we and the Client are entitled to withdraw from the part of the contract related to the quantity affected by the irregularities; neither party shall have recourse to legal action for compensation or damages as a result of this withdrawal.
- (7) Should the Client not take delivery of the goods, and a final delivery deadline of seven days expires without acceptance of the goods by the Client, we shall be entitled to withdraw from the contract and, in addition, to claim due compensation for any unnecessary expenditure incurred.

## **§ 9 Payment**

- (1) Invoices must be paid in full within 7 days upon its issuance. The Client may not, unilaterally, reduce the price, apply any discount or set off the purchase price with any debt payable to our company. The purchase price is deemed to be paid on the day when it is credited to our bank account. If the goods are delivered to the Client after receipt of the invoice, the purchase price is due and payable within 7 days from the actual day of delivery.
- (2) If in default with the payment, the Client must pay the default interest on the outstanding amount that is set by law. This does not affect our right to claim damages.
- (3) Bills of exchange will not be accepted as payment.
- (4) The Client is not allowed to retain the goods and to set off any of its debts payable to our company by an unilateral act.
- (5) If any circumstances that cast serious doubt on the Client's creditworthiness should come to our notice after conclusion of the contract, we shall be entitled to demand immediate payment of all amounts due to us, irrespective of the agreed payment conditions. In addition, we shall be entitled to demand payment in advance / deposits for any deliveries that are still in progress, or to demand full securities and warranties to the extent of the complete value of any such deliveries. The Client's creditworthiness is, in particular, deemed to be in serious doubt when he is more than six weeks in arrears with at least 1/6 (one sixth) of the total sum of all invoices, or the Client's assets have been made the subject of insolvency proceedings. If the Client fails to discharge all his financial obligations to us within a reasonable grace period, we shall be entitled to withdraw from the contract and demand damages, as well as to forbid the Client to resell or otherwise make use of the goods delivered, and to demand – at the Client's expense – the return of the goods.
- (6) We reserve the right to demand a reasonable warranty from the Client to secure all due payment obligations. If the Client does not provide the proper warranty in the reasonable period of time, we may withdraw from the contract and we may claim damages.

## **§ 10 Order cancellation**

- (1) The purchase contract that was concluded based on the confirmed order may be terminated only based on the written agreement. If the purchase contract is terminated, either in part or completely, we shall claim the payment for any goods already manufactured or supplied or any its parts and any possible expenses incurred in connection with the termination of the purchase contract.
- (2) In the event of order cancellation, the Client will be invoiced for the full cost of manufacture samples, patterns and tools. If the cancelled order is reactivated at a later date, we will issue the Client with a corresponding credit note.

**§ 11 Incoming goods inspection, notification of defects and deficiencies, verification of quantity and quality**

- (1) The Client must immediately check the goods and its quantity. If the Client receives any other than agreed quantity of the goods or if any visible defects can be found on the goods, the Client must ensure that any such defects are noted on the documentation accompanying the goods and confirmed by ourselves or the forwarder/delivery agent.
- (2) If the Client discovers during its check-up that it received other than agreed quantity of the goods, the Client must send a proper complaint under warranty that was made in writing and without any unreasonable delay after such check-up, however it must be sent no later than 3 business days after the check-up; any complaints under warranty sent at a later stage will not be valid.
- (3) If the Client discovers during its check-up that the goods have some visible defects, the Client must send a proper complaint under warranty that was made in writing and without any unreasonable delay after such check-up, however it must be sent no later than 7 business days after the check-up; any complaints under warranty sent at a later stage will not be valid.
- (4) If the Client discovers during its check-up that the goods have some hidden defects, the Client must send a proper complaint under warranty that was made in writing and without any unreasonable delay after such check-up, however it must be sent no later than 7 business days after the check-up; any complaints under warranty sent at a later stage will not be valid.
- (5) The date when the complain under warranty was made is deemed to be the date when the complaint under warranty was delivered.
- (6) The Client may exercise its rights only in respect of such defects that exclude or substantially diminish the utility of the goods for such purposes that the goods are usually used for.

**§ 12 Claims arising from defects**

- (1) If the Client does not discharge his obligations regarding inspection of the goods and notification of defects as set out in § 11, the Client will no longer be able to exercise his right to claim any compensation for defects that could be discovered during such check.
- (2) In the event of justified claims for shortfalls or defects, we undertake to make up the shortfall within a reasonable period, or replace the faulty goods free of charge, or rectify the defect(s), respectively. If we are unable to provide an adequate replacement for the missing or defective goods, or provision of replacement goods would entail unreasonable effort or costs, or the replacement goods should be defective, the Client may exercise his rights as set out in §12 section 3. The costs involved in supplementary delivery of missing goods are deemed to be unreasonable if the costs associated with the supplementary delivery of missing goods exceed the value of the missing or defective goods at the time of the transfer of risk by more than 10 %.
- (3) If we are unable to rectify the defective goods within a reasonable grace period determined for the supplementary delivery of the goods, the Client is entitled to choose one of the following options: he may ask for a discount on the purchase price or withdraw from the contract. Any Client's claims for damages are governed by § 13 hereof.
- (4) If the Client is to arrange the supplementary delivery of the goods, the Client must return the defective goods back to us at the location where the goods were delivered. The goods may be collected at a different location only if a written agreement is reached with the Client. In such case, we do not bear any extra costs that additionally incurred as a result of relocating the goods to the other location.
- (5) Claims by the Client for defective goods must be made no later than 12 months from the delivery of the goods, otherwise they will no longer be valid. The parties have agreed that all claims made by the Client against our company will be subject to the statutory limitation period of 12 months.
- (6) Non-standard, gross misuse or mistreatment of our supplied products will result in the immediate

loss of all claim entitlements.

**§ 13 Limitation on claims for damages**

- (1) If any damage is caused to the Client or any third party as a result of a breach of contract or a breach of any duties set by law, our liability is only limited to the foreseeable level of damages that could have been anticipated at the execution of the contract. Unless another fact is proven, the level of damages that could have been anticipated cannot be more than the value of the supplied goods.
- (2) If the Client does not carry out the obligations to inspect goods as set out in § 11, carries them out too late or incompletely, he shall be held partly liable for any damages that could have been minimised or prevented if the inspection had been carried out in a duly and timely fashion.

**§ 14 Reservation of title for sales (domestic)**

- (1) We reserve the title to all goods delivered ("Goods under Reservation of Title"). The Client becomes the owner of the Goods under Reservation of Title only when the purchase price for these Goods is paid in full.
- (2) The Client is entitled to make free use of the Goods under Reservation of Title in the normal course of business. However, the Goods under Reservation of Title may only be alienated or encumbered with our prior written consent.
- (3) If the Goods under Reservation of Title is sold further, the Client must use the purchase price that it has received to settle all the debts that are payable to us by the Client.
- (4) If Goods under Reservation of Title are processed, connected, combined, mixed or blended with other objects, i.e. other goods or materials not owned by us, we will become the co-owners of the new goods or materials in the same proportion as the value of the Goods under Reservation of Title to the other goods at the time they were processed, connected, combined, mixed or blended.
- (5) The Client must immediately inform us in writing about the condition of the Goods under Reservation of Title, its location and labelling. The Client must immediately inform us, even without our request, if the Goods under Reservation of Title are disposed of in any way whatsoever, such as when the goods are seized by any third party or subject to the court seizure.
- (6) The Client must provide all cooperation necessary for the protection of our claims that would be made against any third party in respect of the Goods under Reservation of Title
- (7) The Client undertakes to keep and preserve Goods under Reservation of Title and goods that are partly our property in good condition, to insure them against fire and theft, and to assign claims against the insurer to us upon request.

**§ 15 Third-party property rights and copyright**

- (1) If we supply products which must be designed and constructed to a Client's specification, the Client is solely responsible for ensuring that design or construction do not infringe any third-party property rights or copyright, especially the intellectual property rights. If any third party makes any claims against us as a result of breaching the above, the Client must relieve us from such claims at our first request. The Client will bear all costs and expenses that will incur in connection with these claims (including costs of the court proceedings and legal representation).

**§ 16 Place of fulfilment, place of jurisdiction, applicable law,**

- (1) Our registered company office shall be the place of fulfilment for all obligations arising from the contract or mutual business relations, notwithstanding any explicit agreement(s) to the contrary.
- (2) Any legal disputes arising from or in connection with this contract that will be (even in part) subject to these terms and conditions will be brought before a general court in the jurisdiction of BÜSCH Armaturen spol. s r.o.; however, we are also entitled to pursue legal action against the Client at any other admissible court of law.
- (3) Legal relations between us and the Client are subject solely and exclusively to the laws of the Czech Republic, to the exclusion of conflict-of-laws rules and other regulations set out in the United Nations' Convention on Contracts for the International Sale of Goods (CISG).

