

§ 1 Scope, terminology and definitions

- (1) Our Terms and Conditions of Sale and Delivery (hereafter referred to as the *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 (hereafter referred to as the *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 standard 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 in writing that they are available for perusal on the internet.
- (4) The 'services' referred to in these Terms and Conditions also expressly include mutually agreed advisory and consultancy services as well as assembly and installation of our products.

§ 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 (hereafter referred to as *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 firm order is placed – must be returned to us without delay, including any copies made or provided.
- (3) All dimensions and weights given in our Quotation Documents are only approximate values. We reserve the right to make alterations or improvements without notice.
- (4) We confirm acceptance of the Client's order by sending a written order confirmation. An order is also deemed to have been confirmed if we deliver or supply the goods or services ordered.

§ 3 Agreement on specifications and nature of goods and services, technical advice

- (1) No agreements, other than those described in the order confirmation, applicable to specifications, nature and useful life of goods or services are concluded with the signing of the sales contract. Any such agreements made thereafter shall be recorded in due written form and countersigned by the Client. 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 specifications, nature and useful life on our part.
- (2) Submitting our quotation does not constitute the provision of technical advice. 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. The suitability of a product for the purposes of normal use is only guaranteed within the scope of 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: 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) Placing an order / accepting the quotation is deemed to be a declaration on the part of the Client that he has carried out the above-mentioned checks.

§ 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 tariff-related wage or salary increases, or increased material or energy costs), we reserve the right to make reasonable (in accordance with § 315 BGB / German Civil Code) 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 it would have had at the exchange rate 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 payment of a supplementary handling charge of 25.00 EUR (plus VAT).
- (6) Samples will only be provided against payment, unless agreed otherwise.

§ 6 Provision of tools, models

- (1) As a matter of principle, invoices will show the cost of tools and models necessary for the proper execution of an order as a separate item i.e. separate from the value of the goods themselves. This item on the invoice must be settled upon delivery of the requested pattern/sample or upon initial delivery of the goods, respectively, unless other arrangements have been agreed in writing with the Client beforehand.
- (2) Payment for tools or models does not entitle the Client to demand the surrender of the said tools or models, of which we remain sole owner and proprietor. In order to facilitate 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 three years have elapsed that further orders will be placed within a twelve-month period 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.

§ 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. Payment is considered punctual when the entire sum is at our free disposal on the specified account on the due date. If the goods are delivered to the Client after receipt of the invoice, the date by which payment is due shall be calculated from the actual day of delivery.
- (2) Default interest at an annual rate of 8 % above the basic lending rate shall be due in case of default. This does not affect our right to claim for any damages proven to be in excess of the above.
- (3) Bills of exchange will not be accepted as payment.
- (4) Payments may not be withheld or offset if we dispute the Client's claim, or if the Client's right to withhold or offset payment has not been established by due legal process.
- (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 any terms or conditions of payment or similar agreements to the contrary. In addition, we shall be entitled to demand payment in advance for any deliveries still outstanding, or full securities to the complete value of any such deliveries. The Client's creditworthiness is, in particular, deemed to be in serious doubt when he is six weeks in arrears with at least 1/6 (one sixth) of the total sum of all invoices, or a bank withholds payments made by direct debit mandate, or cheques and/or bills of exchange are not honoured; or it comes to our notice that compulsory execution orders (even on behalf of third parties) have been ineffective, 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 in lieu of performance, 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 or transfer of indirect possession of the goods already delivered. The same shall also apply when a reasonable grace period is not strictly required by law.
- (6) We reserve the right to demand securities of the customary kind and value from the Client at any time to cover all due payment obligations, including temporary or conditional obligations.

§ 10 Order cancellation

- (1) Cancellation or retroactive restriction of the order must be agreed between the parties in writing. In the event of partial or complete cancellation of an order by the Client, we shall be entitled to issue a revised invoice, with a corresponding price adjustment, for the quantity actually delivered.
- (2) In the event of order cancellation, we will without exception invoice the Client for products or components already manufactured and/or raw material already purchased for the purposes of the cancelled order. By agreement, pre-manufactured parts may be delivered to the customer as semi-finished or finished goods.

- (3) In the event of order cancellation, the Client will be invoiced for the full cost of 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 check the goods for any obvious discrepancies in quantity at the point and time of delivery; any discrepancies must be noted on the documentation accompanying the goods and confirmed by ourselves or the forwarder/delivery agent. No subsequent claims for discrepancies that could or should have been recognised immediately will be accepted.
- (2) If it is necessary to completely unpack the goods in order to perform a proper check, this must be done without delay. Notification of any discrepancies must be sent to us in written form within three working days of receipt of the goods.
- (3) Apparent defects must be reported in writing without delay, and at the latest within seven working days of receiving the goods.
- (4) Hidden defects must be reported in written form without delay, and at the latest within seven working days of their discovery.
- (5) Notification of defects is considered timely in the spirit of § 11 sections 1 and 4 if notification is received within the respective time periods set out above.

§ 12 Warranty

- (1) If the Client does not discharge his obligations regarding inspection of the goods and notification of defects as set out in § 11, or discharges them too late, the delivery is deemed to have been accepted as received. Once a delivery has been accepted as received, the Client shall no longer have recourse to legal proceedings against us on account of defective goods, unless it is subsequently proven that we had concealed such defects deliberately and with intent to defraud.
- (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 delivery itself should be defective, the Client may exercise his rights as set out in §12 section 3. The effort or costs involved in supplementary delivery of missing goods or replacement of defective ones are deemed to be unreasonable if the cost of replacing missing or faulty goods exceeds the value of the goods at the time of the transfer of risk by more than 10 %.
- (3) If we are unable to fulfil our obligations to make good any shortfall or provide suitable replacements for defective goods within a reasonable grace period, the Client is entitled to choose one of the following options: he may pay a reduced price, or withdraw from the contract, or demand compensation in damages or other reimbursement of costs as laid down in § 13. If the Client cannot reasonably be expected to accept the goods supplied by way of replacement, he is entitled to make immediate use of the rights set out in sentence 1 above. The Client's right to withdraw from the contract or demand compensation shall not apply in the case of minor quality defects.
- (4) The Client shall not be entitled to claim for any expenses incurred in the course of supplementary performance, in particular for freight, carriage, labour and material expenses, if these expenses increase because the goods in question were subsequently moved to a different location from the Client's usual domicile, unless this relocation is required so that the goods can be used for their intended purpose.
- (5) Claims by the Client for defective goods, or services not provided according to the terms of the contract, shall fall under the statute of limitations a maximum of 12 months after the start of the statutory limitation period.
- (6) If the goods supplied have been used for their intended purpose in a building or structure and thereby caused it to be defective (§ 438 section 1 no. 2 and § 634a section 1 no. 2 BGB / German Civil Code), the Client's entitlement to claim for damages caused by defects ends five years after the statutory limitation period has begun, provided the Client presents evidence (in form of an agreement concluded with his principal) that he and his principal did not agree on a shorter period of limitation.

- (7) The terms set out in § 12 sections 5 and 6 do not apply in the case of claims arising from intentional breach of contract or fraudulent concealment of defects on our part.
- (8) Gross misuse or mistreatment of our products will result in the immediate loss of all claim entitlements in cases where the defects and damage resulting from these defects were caused by the Client.

§ 13 Liability for other claims for damages

- (1) In cases where a breach of contract by us or our agents is merely negligent (not intentional or grossly negligent), our liability is limited to the foreseeable level of damages normally provided for in such a contract. This does not apply in the case of a significant breach of contract, or of damage to life, body or health. The restriction of liability is also inapplicable in cases covered by product liability legislation, which regulates liability for defective goods intended for private use that cause damage to property or personal injury.
- (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 damage that could have been minimised or prevented if the inspection had been carried out as stipulated.

§ 14 Reservation of title for sales within Germany (domestic)

- (1) We reserve the title to all goods delivered and invoiced (hereafter referred to as *Goods under Reservation of Title*) until the invoice has been paid in full. In the case of existing business relationships with known partners, we remain the sole owner of Goods under Reservation of Title until all the Client's present and future debts to us have been discharged. The reservation of title therefore also remains in force when individual debts have been incorporated in current invoices and the balance has been drawn and acknowledged. Demands for payment remain in force – even if a payment has been made – for as long as liability for a bill of exchange, for example in the case of a cheque-bill of exchange transaction, remains with us.
- (2) The Client is entitled to make free use of the goods delivered in the normal course of business, provided that he fulfils all obligations to us arising from the mutual relationship punctually. The Client is not entitled to pledge or assign the goods as security.
- (3) The Client is obliged to ensure that our rights are protected if he resells Goods under Reservation of Title on credit. The Client hereby assigns to us, by way of security, claims arising from the sale of any Goods under Reservation of Title that correspond to our actual title of ownership of the goods. We accept this assignment. Notwithstanding this assignment, the Client is entitled to collect claims on condition that he discharges his obligations to us – particularly in form of full and punctual payments – in an orderly fashion. The Client must, upon request, provide us with the necessary information in connection with the assigned claims required for collection and notify the third-party debtor of the assignment.
- (4) If the Client includes claims arising from the resale of Goods under Reservation of Title and in a current account relationship with the third party purchaser of the goods, then he must assign to us the current account claim in full. After the account has been balanced, this will be replaced by the acknowledged balance, which is deemed to have been assigned up to the amount of the original current account balance due.
- (5) The Client processes goods for us, the manufacturer, in accordance with § 950 BGB (German Civil Code) and with no obligation on our part. Title to the finished and semi-finished goods thus produced is transferred to us and the Client acts only as the keeper of the goods. This also applies even if the newly produced goods are of greater value than the Goods under Reservation of Title, whereby the processed goods only serve as security up to the value of the Goods under Reservation of Title.
- (6) If Goods under Reservation of Title are processed, connected, combined, mixed or blended with goods or materials not owned by us, part-ownership of the new goods or materials shall be transferred to us 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. If the new goods become the sole property of the Client, the parties to the contract agree that the Client shall concede part-ownership of the new goods to us in proportion to the value of the Goods under Reservation of Title that were processed, connected, combined, mixed or blended, and shall not charge us for their safekeeping on our behalf.

- (7) If Goods under Reservation of Title are resold immediately, either without or after being processed, connected, combined, mixed or blended with other goods, the advance assignment agreed above applies only to the value of the Goods under Reservation of Title resold at the same time as the other goods.
- (8) The Client shall, on request, provide us with all requisite information on the status and inventory of our property under reservation of title that is in his safekeeping.
- (9) In the case of court seizures or other third-party claims on goods – not only with regard to Goods under Reservation of Title, but also to claims assigned as security – the Client shall notify us immediately in writing and provide us with all documentation required for an intervention on our part (e.g. copy of the court seizure record). Expenses incurred in the course of any such intervention will be borne by the Client, unless these expenses are met by a third party.
- (10) If requested to do so by the Client, and in cases where the realisable value of our securities exceeds the level of our claim against the Client by more than 10 %, or the estimated value of the secured goods by 20 %, respectively, we undertake to release securities due to us; we are at liberty to decide which securities shall be released.
- (11) 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 Reservation of title for sales outside Germany (foreign)

- (1) We reserve the title to all goods delivered and invoiced outside Germany, and in accordance with the respective legal requirements of the country of destination, until the invoice has been paid in full. This reservation of title is considered to have been explicitly agreed between us and the Client. Provided that the legal requirements of the country of destination do not contain any significant differences, the conditions for domestic sales as set out in § 14 above shall also apply for sales outside Germany.
- (2) If the legal requirements of the country of destination do not permit the reservation of title, then we shall be entitled to protection of our interests in accordance with the applicable local legislation covering security rights. The Client is obliged to inform us of any measures we are required to take to protect the above interests, and to assist us in taking these measures. If third parties lay claim to our property, we are to be notified in writing immediately. We are entitled to carry out any registration processes that may be required by the laws of a foreign country on account of reservation of title.

§ 16 Third-party property rights and copyright

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 third-party property rights or copyright. The Client shall hold us harmless of any liability whatsoever at our first request in case of any action brought for infringement of property rights or copyright.

§ 17 Place of fulfilment, place of jurisdiction, applicable law, translation

- (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) Insofar as the Client is a merchant, or is not subject to the jurisdiction of a German court, the responsible court shall be identical with that of our registered office; 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 Federal Republic of Germany, 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).
- (4) The German language version of these Terms and Conditions forms the basis for the present contract. This is also valid when a translation into another language than German is used in addition to the German version.

Protection of Privacy notice:

BÜSCH Armaturen Nürnberg GmbH, 90451 Nürnberg
Terms and Conditions of Sale and Delivery

The provision of data protecting is contained in the privacy policy.