

General Terms and Conditions of Business of Burgmer Apparatebau GmbH, 42327 Wuppertal

A. General

1. The following terms and conditions shall apply to all current and future transactions between the Customer and us, even in the event that we fail to expressly disclaim differing terms and conditions.
2. Our terms and conditions apply exclusively. We do not acknowledge any conflicting terms and conditions, or the Customer's differing terms and conditions, even in the event of our unreserved execution of the contract. No verbal agreement may replace the stipulation of the written form.
3. Should any provisions of the contract or of these terms and conditions be or become invalid, the validity of all others shall remain unaffected. In such a case the invalid provisions shall be replaced by other legally acceptable regulations that most closely correspond to the economic intent of the invalid provision.
4. All agreements between the Customer and us for the execution of the contract must be contained in writing in this contract or in an amended contract.
5. The Customer's rights arising from this contract are not transferable.
6. German law applies exclusively; the UN Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

B. Quotations and Prices

1. Our quotations are subject to change. Technical descriptions and other details in offers, brochures and all other information are equally not binding in the first instance.
2. Our prices are subject to change and, unless otherwise expressly agreed, are quoted ex factory. Our generally valid prices on the day of delivery are applicable. Should more than four months have elapsed between conclusion of the contract and delivery, the agreed price will increase by the general rise in our prices during this period.
3. We reserve all ownership rights and all copyright to illustrations, drawings, calculations and other material, which must not be made available to third parties.
4. Details in the sense of paragraph 1 and in public statements made by us, by manufacturers or their agents (§ 434 I 3 BGB – German Civil Code) only form part of the product or service specification if the contract makes direct reference to them. Otherwise the provisions of paragraph G. 13 apply.
5. Our prices do not include packaging and are quoted ex factory. Additional details such as insurance are to be borne by the Customer unless otherwise agreed. The provisions of paragraph C. 5 apply for single package dispatch.
6. Our prices do not include statutory VAT, which is calculated on the basis of the legally valid tax rate on the date of the invoice, and which is indicated separately in the invoice.

C. Delivery and Cooperation Obligation

1. Delivery dates given are not binding unless they have been agreed in writing and specifically designated as binding. Delivery periods begin on the day of our order confirmation, however not before the clarification of all technical and commercial details. All delivery dates given are subject to the Customer's cooperation in accordance with the contract. The Buyer's prompt and due fulfillment of this obligation is the pre-requisite for the observance of our delivery commitments.
2. Should the Customer be unable to provide sufficient guarantees for his ability to pay after conclusion of the contract and should our claim for payment thereby be endangered, we shall be entitled to refuse delivery until the Customer has effected payment or provided sufficient security therefor. Should payment or provision of security not be made within 12 working days following a corresponding request, we shall be entitled to withdraw from the contract. We reserve the right to claim damages.
3. Should the Customer delay calling off or collecting an order, or should there be a delay in dispatch or shipment attributable to him, we shall be entitled, irrespective of further possible claims, to demand a lump sum in the amount of the local customary warehouse charges, regardless of whether we place the goods in storage at our premises or at those of a third party. It is up to the Customer to demonstrate that no or lower damage has been incurred.
4. The Customer may collect the goods from our factory at his own expense immediately after communicating his intention to accept the goods, however only after prior arrangement.
5. In cases where no specific shipment instructions are given with the order, we shall effect shipment at our discretion in a commercially conventional manner.
6. If goods reach the Customer in a damaged state, and should the Customer wish to assert his rights regarding the manner of packaging, he must communicate this to us immediately and make the shipment available for inspection in that state.

D. Delays in Delivery

1. Should we be unable to meet the agreed delivery date due to circumstances beyond our control or that of our suppliers, it will be extended by a suitable term. In such an event we shall inform the Customer immediately. Should the constraining circumstances continue for more than one month after the agreed delivery date either party may withdraw from the contract. All further claims due to our failure to meet the delivery date because of circumstances beyond our control are excluded.
2. In the event of a delay in delivery the Customer may set an appropriate extension in writing of at least 15 working days. He is entitled to withdraw from the contract if the extension expires without result.
3. Paragraph 2 shall not be valid in cases where the delay is due to intent, gross negligence or fundamental breach of obligation or where a firm commercial business transaction has been agreed. Any further claims for damages are excluded.

E. Payment

1. The agreed prices are payable net in cash within 30 days from the date of the invoice.
2. We grant a cash discount of 2% for payment within 14 days of the date of the invoice.
3. Should the Customer delay payment we shall charge the statutory interest for default, currently 5% above the German Federal Bank's base interest rate for consumers, and 8% if the Customer is not a consumer. We reserve the right to provide evidence for higher loss or damage caused by the delay.
4. Cheques and bank drafts shall be deemed as valid payment only after they have been encashed. All costs incurred thereby to either party shall be borne by the Customer.
5. Cash discounts are calculated on the net invoice amount plus VAT and after deduction of all credit notes. Cash discounts will only be granted if there are no due amounts open on the Customer's account.
6. The Customer has the right to offset or withhold payments only in the case of undisputed or legally established claims.
7. Should the Customer be in default with payment, we may, at our option, refuse any further fulfillment of the contract.

F. Place of Fulfillment and Jurisdiction

The place of fulfillment for delivery and payment as well as jurisdiction – also for claims arising in connection with cheques and drafts – shall be the location of our registered office. If the Customer is a trader or legal person governed by public law, the place of jurisdiction for all disputes shall be the location of our registered office. This place of jurisdiction is not exclusive. Unless otherwise defined in the order confirmation, delivery is considered "ex factory" exclusive of packaging.

G. Defect of Quality/Remedy/Reproof/Breach of Obligation

1. With regard to defects of quality the Customer is in the first instance subject to the legal obligations for inspection and reproof contained in §377 HGB – German Commercial Code. We must receive his immediate written reproof of evident defects of quality within 8 days of receipt of the goods. Reproof of hidden defects which were not discovered within this period despite careful inspection must be submitted to us within the statutory limitation period immediately on discovery of the defect, however within 8 days at the latest. We shall be exempt from liability in cases where we receive belated reproof.
2. The Customer may derive no additional rights from defects of quality that have no or only insignificant effects on the value of the goods and on their fitness for the use that we recognise. This also applies to deviations in dimensions or weight that are commercially standard practice, or caused by the production process, as well as to slight form variations in as much as they have only a slight effect on the overall impression or the functionality of the item supplied.
3. We do not assume any responsibility for damage caused by the following: unsuitable or improper use or storage, faulty assembly or implementation by the Purchaser or third parties, normal wear and tear or depletion particularly for units and parts that are subject to premature wear due to the type of use as a consequence of their material composition, faulty or careless treatment, undue operational strains, i.e. exceeding the demand limits agreed, standard for the trade or acknowledged prior to the contract, as well as handling that does not conform to the intended use.
5. If the goods show defects at the time of the transfer of risk, we shall be entitled and obligated to remedy them. Remedy shall be effected at our option by rectification of the defects or by replacement. If the costs of remedy amount to more than 50% of the value of the shipment, we shall be entitled to refuse to remedy the defects.
6. Should the attempt to remedy defects fail, we shall be entitled to a repeated attempt. Should this attempt also fail, or if it is not effected by an appropriate deadline set by the Customer or if it is declined, the Customer shall be entitled at his option to withdraw from the contract, to demand a lowering of the purchase price (reduction) corresponding to the value of the defect or – within the limits of the following paragraphs – compensation in lieu of performance.
7. Should a defect of quality cause loss or damage, we shall be liable according to statutory provisions in as far as it pertains to personal injury, to loss or damage covered by the Product Liability Law or can be attributed to intent or gross negligence.
8. Should damage or loss be attributable to a culpable infringement of a fundamental contractual or "cardinal" obligation, we shall for the rest be liable only for damage typical for this type of contract.
9. Further contractual and tortious claims on the part of the Customer are excluded. We shall therefore accept no liability in particular for damage or loss that did not originate on the delivered item itself and for the lost profit or other financial losses to the Customer.
10. The terms and conditions detailed above do not apply to used goods. We shall be liable for defects of quality in these goods only if we expressly assume warranty obligations or in cases of intent or gross negligence.
11. Rights arising from § 478 BGB (German Civil Code) remain unaffected by paragraphs 2-8.
12. The provisions of paragraphs 5-7 also apply to claims for damages due to other obligation infringements and for tort liability.
13. In the event of an infringement of an obligation that predates the contract, or of an obstacle to performance at the conclusion of the contract (§§ 311 II, 311a BGB – German Civil Code) our liability is limited to the duty to compensate for loss due to breach of faith corresponding to paragraphs 5-7.
14. To the extent that our liability is excluded or limited, the personal liability of our employees, staff, associates, representatives and agents shall be excluded or limited.
15. We shall be liable for advertising statements or errors in the instruction manual only if the Customer is a consumer.

H. Limitation

1. Claims for remedy by a Customer are limited to two years subject to §§ 438 no.2, 479 BGB (German Civil Code), for used or reworked goods to one year from date of invoice. If the Customer is a legal person governed by public law or a part of separate legal estate, the warranty period is one year. Accordingly the right to withdrawal from the contract and reduction in line with legal provisions is excluded.
2. Subject to §§ 478 no. 2 479 BGB ((German Civil Code) claims for damages are limited to one year.
3. The statutory limitation period applies for claims entered under the Product Liability Law and in cases of intent and gross negligence.

I. Retention of Title

1. We reserve the title to the supplied goods until all claims for payment on the Customer arising from the business relationship, including future claims arising from concurrent or subsequent contracts, have been fulfilled. This also applies when claims for payment from a current account have been regulated, the account balance has been taken and acknowledged.
2. The Customer is entitled to sell the goods in the course of normal business or to process them. He performs any processing for us without any obligation for us being incurred. When processing, connecting or mixing goods to which we reserve title with other goods, joint ownership to the new object originates as a matter of principle; for processing, in the proportion of the value (= gross invoice value including additional expenses and taxes) of the reserved goods to the value of the new object; when connecting or mixing, in the proportion of the reserved goods to the value of the other goods.
3. The Customer herewith assigns to us all rights to claims against purchasers or third parties arising from the sale of the goods. Even after the transfer of these rights he remains authorised to collect these claims. Our right to collect the claims ourselves remains unaffected; however we shall not exercise this right for as long as the Customer continues to meet his payment and other obligations in due manner. The Customer is obligated to surrender the assigned claims and all documentation relating to them on demand and to inform the liable party of the transfer.
4. Should the Customer contravene the provisions of this contract, in particular in the case of delayed payment, we are entitled to withdraw from the contract and to reclaim the goods. For the purpose of reclaiming goods the Customer herewith irrevocably permits us to enter his business premises and warehouse without hindrance and to take the goods.
5. For the term of the reservation of title the Customer may neither transfer as security nor pledge the goods or objects manufactured from them. The conclusion of financial agreements (e.g. leasing contracts) which include the transfer of our reserved titles requires our prior written consent, unless the financing institute's agreement requires the immediate payment of the outstanding purchase price to us.
6. In the event of seizure and other interventions by third parties, the Customer must inform us immediately in writing. He is forbidden to reach any understanding with his purchasers that could impair our rights.
7. We undertake at the Customer's request and at our discretion to release securities to which we are entitled insofar as the realisable value of the securities exceeds the claims by more than 20%, or their nominal value exceeds the claims by more than 50%.