

General Terms and Conditions for Business People
by the company **BDM Germany GmbH** (*limited liability company*), 33415 Verl

I.

Scope of Application

- (1) The following general terms and conditions apply exclusively to the business dealings with companies within the meaning of section 14 of the BGB (*German Civil Code*) and not to consumers within the meaning of section 13 of the BGB. They apply to all deliveries of goods and provisions of services of the company BDM Germany GmbH.
- (2) Divergent, contrary and/or additional terms and conditions by the buyer and/or orderer (hereinafter also referred to as "customer") do not apply and will not be recognized, even if reference has been made to these in the order. Something different will apply if we explicitly agree to the customer's conditions in writing.
- (3) In the case of continuous business relations, our terms and conditions also apply to future business transactions, to which reference is not explicitly being made, provided that the customer has received them with an order confirmed by us earlier.
- (4) Supplements or changes to this agreement will only apply if they are confirmed by us in writing.

II.

Prices

- (1) All prices are quoted from our place of business, excluding transport, packaging, insurance of the goods, customs duty and accessory duties, plus value-added tax in the effective amount.
- (2) The deduction of any cash discounts requires a special agreement in writing.

III.

Delivery, Period of Delivery, Passage of Risk

- (1) Delivery is effected from our place of business and in all cases at the customer's expense and risk, even if assembly and set-up of the goods have been agreed to take place at the customer's place of business. Passage of risk to the customer regularly occurs at that point in time when the goods are delivered from our place of business.
- (2) Transport insurance is only taken out upon the customer's wish and at his expense.
- (3) To meet delivery deadlines, the timely receipt of all documents, necessary permits and releases (especially of plans), which have to be submitted by the customer, as well as the customer's observance of the terms of payment and duties is required.
- (4) If a stipulated period of delivery is not met due to our actual fault, the customer is entitled to claim compensation for default after an adequate grace period, excluding further claims, unless we have acted with gross negligence or intent. The compensation for default is limited to at the most 5 % of that part of the delivery, which has not been effected according to contract. The customer is at liberty to provide proof of a higher claim.
- (5) Force majeure, especially in the form of official measures and other hindrances to delivery not caused by us, which concern our place of business or that of suppliers, especially operational and transportation disruptions, damage by fire, shortage of transport facilities, consequences of strike/lock-out or similar impediments release us from our obligation to deliver for the time of their effect. We are entitled to withdraw from the contract if, for any of the aforementioned reasons, fulfillment of the contract can no longer be expected from us. We will notify the customer immediately if a case of force majeure, as explained before, occurs.

IV.

Acceptance, Call-Forward Notice, Delay in Accepting Delivery

- (1) If the customer does not state a special delivery date within 10 days after we have indicated readiness to deliver, we are entitled to effect delivery without any further setting of a time limit or notification, or to store the goods in our warehouse or with a third party at the customer's expense. If delivery of the goods is delayed by more than a month after indication of readiness to deliver upon the customer's wish, we may charge

storage money in the amount of 0.5 % of the price of the goods delivered, however, 5 % at the most in total, for every further commenced month. We and/or the customer are at liberty to provide proof of higher and/or lower storage costs.

- (2) If the period of 10 days stated in the above-mentioned section (1) has expired, maturity regulations previously agreed upon will lapse. The total purchase price will become due immediately. Aside from possible claims for damages, especially the reimbursement of storage costs in accordance with the regulations stated in the aforementioned section (1), we are entitled to claim it immediately.
- (3) In case of expiry of the time limit in accordance with the aforementioned section (1), we are, alternatively and in addition to the rights mentioned in the previous section (2), entitled to reject the fulfillment of the sales contract and to claim damages from the customer in the amount of 20 % of the total purchase price and/or total wages. Proof of higher and/or lower claims for damages shall remain reserved to us and/or the customer.
- (4) If the delivery or the execution of assembly is delayed for reasons attributable to the customer, the risk of accidental perishing and accidental worsening of the goods already passes upon our notification of readiness for dispatch.

V.

Payment, Delay

- (1) Unless otherwise stipulated, our invoices are payable within 10 days after delivery of the goods. This also applies if the goods are delivered as part of a contract for work and services and/or a contract for work and materials and acceptance occurs after delivery or is supposed to occur after. After expiry of this deadline, the customer gets into arrears.
- (2) Cash discount agreements and agreements on targets only apply to the respective order which has been confirmed. In case of credit sale agreements, a cash discount agreement lapses and the total stipulated price is payable without a discount deduction, if the customer pays or has paid the installments within the stipulated deadlines for early payment, however, the final payment is not made within the stipulated deadline for early payment.

- (3) Bills of exchange and checks are only accepted as payment but only apply as payment after encashment. With the acceptance of a bill, a stipulated deduction for early payment is not applicable, without a special agreement being necessary. This also applies in the case that discount charges are at the customer's expense.
- (4) In case of the customer's delayed payment, all claims, including deterred claims, become due immediately. Furthermore, delayed payment results in our not delivering any further goods until all due claims have been met.

In the following cases especially, all invoice amounts remaining unpaid, become due immediately:

- the customer's check or bill of exchange cannot be redeemed,
 - the customer's payment is delayed,
 - the customer has suspended his payments,
 - the customer constantly disobeys the terms of payment,
 - a request for the opening of insolvency proceedings against the customer's assets has been instituted or
 - there are other facts which can be considered synonymous with a suspension of payments.
- (5) In the case of delayed payment, we are entitled to claim interest on payments in arrears of 8 percentage points above the base rate. Upon proof, however, we are entitled to claim an even higher interest loss. The customer is at liberty to provide proof of a lower loss.
 - (6) With regard to deliveries not yet effected and in addition to our rights from the previous sections (4) and (5), we are furthermore entitled to claim advance payment or provision of security in case of delayed payment. The same applies in the case of other events at the customer's company, which make his creditworthiness seem doubtful or if such circumstances that were present before the conclusion of the contract only become known to us afterwards. If the advance payment or the provision of security is not effected within an adequate period, we are entitled to withdraw from the contract or to claim damages for non-performance.

VI.

Right of Set-Off, Right of Retention

- (1) A set-off from the customer is only acceptable with claims undisputed by us or claims recognized by declaratory judgment.
- (2) The enforcement of a right of retention by the customer, owing to claims which do not stem from the same contractual relationship, is excluded.

VII.

Damages for Non-Performance

In all cases, in which the customer is obligated to pay damages for non-performance, we may claim 20 % of the stipulated purchase price/wage as damages, subject to proof of higher damage. The customer is free to prove that there was no damage at all or damage that was considerably smaller.

VIII.

Retention of title

- (1) Until payment in full of all our claims due from customers, we retain title to all the goods delivered by us.
- (2) The customer is entitled to resell the delivered goods in the ordinary course of business. In turn, he is obligated to agree on retention of title that is as comprehensive as possible. In the case of resale, the customer now already assigns his claims from the resale of the goods delivered by us up to the amount of our claims from the delivery of the goods to be sold to us in advance. We accept the assignment. The customer is entitled to collect the assigned claim in advance with subject to withdrawal at any time.
- (3) The customer is not entitled to other disposals of the goods subject to retention of title, which exceed the extent of the disposition stated in the aforementioned section (2); above all, he is not entitled to a pledge or transfer by way of security.

- (4) With suspension of payment, a request for or the opening of insolvency proceedings or with the occurrence of similar indications of deterioration of assets, the customer's right to resell and to collect the assigned claims, according to the aforementioned section (2), expires.
- (5) If the customer intends to use the goods subject to retention of title in his own commercial enterprise, the following applies:

Subject to our withdrawal, the customer is entitled to use the goods delivered by us for the purposes of his manufacturing firm. However, the customer is only entitled to the resale to third parties and/or the transfer of the goods subject to retention of title from the production facility where our delivery item was first installed, with our expressly written permission which must be obtained beforehand. The customer must treat the goods subject to retention of title with care.

- (6) We must be immediately notified of any distraints or confiscation of the goods subject to retention of title by third parties, as well as of any damage to or destruction of the goods. Costs of intervention resulting from this must be paid by the customer in any case, unless they are not borne by third parties.
- (7) With suspension of payment, the opening of insolvency proceedings against the customer's assets or in the presence of such circumstances, which justify doubts about the customer's creditworthiness, especially in the event of delayed payment by the customer, we are entitled to revoke the use of our goods subject to retention of title by the customer, after the unsuccessful expiry of an adequate deadline set to the customer and, for our safety, to demand the surrender of the goods subject to retention of title; the statutory provisions on the dispensability of setting deadlines remain unaffected. Provided we are entitled to claim damages for non-performance, in accordance with legal provisions, we may privately sell the goods subject to retention of title, while safeguarding the customer's interests. The customer is obligated to reimburse the costs for the withdrawal of the goods subject to retention of title as well as any impairment, even in the case of withdrawal from the contract.
- (8) If the value of the allowed securities exceeds our claims by more than 20 %, we are insofar obligated to reassign or release securities of our choice upon the customer's request.

IX.

Notice of Defect, Warranty

- (1) The customer's warranty rights require that the customer has properly met his duties to examine the goods and to complain in respect of a defect immediately on receipt of the goods, in accordance with section 377 of the HGB (*German Commercial Code*). Defects noticeable upon proper examination must be advised of within a period of 7 days after receipt of the goods, other defects must be advised of in writing within 7 days after having been discovered. However, section 377 of the HGB does not apply to plain contracts for services, such as service and maintenance jobs for machines.
- (2) The claim for warranty for material defects lapses after 12 months, counted from the day of passing of risk. This solely applies to the regulations in sections 438 article 1 No. 2, 634a article 1 No. 2 BGB as well as in the case of intent or fraudulent concealment of a defect on our part. The legal regulations about suspension of expiry, suspension and restart of the deadline remain unaffected.
- (3) After expiry of the aforementioned deadline, warranty claims can no longer be made.
- (4) Until a notice of defect has been settled, the faulty goods may neither be sold nor changed without our consent; otherwise the customer forfeits his warranty claims.
- (5) With a justified notice of defect, we may either repair the defective part free of charge or replace the product and/or its defective parts. In the case of a failed repair or replacement, the customer is entitled to reduce the purchase price or to withdraw from the contract. The repair is only considered to have failed if we have been allowed at least three attempts at repair for one and the same defect which have been unsuccessful. However, with a minor infringement of contract, especially with minor defects, the customer is not entitled to a right of withdrawal.
- (6) In any case of return consignment of the defective goods to us, the customer must resend the goods or the parts requested at our expense and as instructed by us to the business premises' address, according to instructions and properly packaged.

- (7) According to the sections 478, 479 BGB (entrepreneur's recourse), the customer's rights of recourse towards us only apply insofar as no agreements, which go beyond the legal claims for defects, have been made with their customer; however, they do not apply to ex gratia payments not agreed on with us, and require the observation of the person entitled to recourse's own duties, especially the observation of the duty to complain in respect of a defect immediately on receipt of the goods.
- (8) Further claims, especially reimbursement of expenses claims or claims for damages because of a defect or consequential harm caused by a defect, only exist in the context of the regulations under the following point X.

X.

General Limitations of Liability

- (1) In all cases, in which, deviating from the previous conditions, we are obligated to damages or reimbursement of expenses because of contractual or legal bases for a claim, we are only liable if intent, gross negligence or injury to life, limb or health can be held against us, our executive staff or vicarious agents. The liability without fault, according to the Product Liability Act, remains unaffected. Moreover, the liability for the culpable violation of fundamental contractual obligations also remains unaffected; however, liability is limited to the damages foreseeable and typical for the contract – except in those cases stated in the previous section 1. A fundamental contractual obligation in the sense of these terms and conditions is present if we should culpably violate such obligations, in whose proper fulfillment the customer trusts and may trust as well because they characterize the contract.
- (2) The limitation of liability, according to the previous section (1), article 3, also applies in case of slight neglect of duty by us, our legal representatives or vicarious agents. In case of slight neglect of duty of non-fundamental contractual obligations, however, we are not liable.
- (3) Claims for damages by the customer due to a defect, lapse after one year from delivery of the goods. This does not apply if we can be accused of fraud.

XI.

Place of Fulfillment, Place of Jurisdiction

- (1) This contract is subject to German law; the language of the contract is German. The UN Sales Convention's (CISG) regulations are not applicable.
- (2) Our place of business is also place of fulfillment and exclusive place of jurisdiction for all disputes arising from this contract.

XII.

Binding Character of the Contract

Even in the event of legal ineffectiveness of individual points, the contract remains binding in its remaining parts. Only if adherence to the contract would place undue hardship on one of the parties, does this not apply. Should individual regulations of this contract be or become ineffective or be incomplete, the remaining regulations remain unaffected hereof. The parties commit themselves to find such a legally acceptable regulation, instead of the ineffective regulation, which comes closest to the economical purpose of the ineffective regulation and/or fills this gap.

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