

# General terms of sale and delivery – Braun Metall Vertriebs GmbH

## § 1 General / Scope

- (1) Our conditions of sale apply exclusively; We do not recognize any terms and conditions of the customer that contradict or deviate from or supplement our terms of sale, unless we have expressly agreed to their validity in writing. If we refer to a letter from the customer that contains or refers to the terms and conditions of the customer or a third party, this does not constitute consent to the validity of these terms and conditions. Our conditions of sale also apply if we carry out the delivery to the customer without reservation while being aware of conditions that contradict or deviate from or supplement our conditions of sale.
- (2) Our terms of sale only apply to companies i. S. v. Section 310, Paragraph 1 of the German Civil Code (BGB) as well as legal entities and special funds under public law.
- (3) Should a provision in our sales conditions be or become ineffective, this shall not affect the effectiveness of all other provisions.

## § 2 Offer and conclusion of contract / deviating verbal agreements

- (1) Our contract offers are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. We are entitled to accept orders within 14 days of receipt. The period begins with the receipt of the order.
- (2) Our written order confirmation is decisive for the scope of the delivery or service. Assurances of properties, additions or ancillary agreements must be made in writing to be effective.
- (3) Our sales employees are not authorized to give verbal subsidiary agreements or assurances that go beyond the content of the written contract.
- (4) We reserve property rights and copyrights to illustrations, drawings, calculations and other documents. Before passing them on to third parties, the customer requires our express consent.
- (5) In the case of series or custom-made products, we reserve the right to over- or under-deliver by 10%. The excess or shortage will be charged accordingly.
- (6) We are entitled to make partial deliveries if they are reasonable for the customer.

## § 3 prices / payment

- (1) The prices quoted by us apply to the scope of services and scope of delivery listed in the order confirmation. Additional or special services will be charged separately. The prices are in euros ex works plus packaging, statutory value added tax, customs duties for export deliveries and fees and other public charges.
- (2) Unless a fixed price agreement has been made, we reserve the right to make reasonable price changes due to changes in wages, material and / or sales costs for deliveries made four months or later after the conclusion of the contract.
- (3) Invoice amounts are to be paid within 30 days without any deduction, unless otherwise agreed in writing. The date of receipt by us is decisive for the date of payment. Checks are only considered payment after they have been cashed.
- (4) We are entitled to only carry out outstanding deliveries or services against advance payment or security if we become aware of circumstances after the conclusion of the contract which are likely to significantly reduce the creditworthiness of the customer and through which the payment of our outstanding claims is endangered by the customer from the respective contractual relationship.

## § 4 delivery periods / default of acceptance / transfer of risk

- (1) Deliveries are made ex works.
  - (2) Deadlines and dates for deliveries and services promised by us are always only approximate, unless a fixed deadline or date has been expressly promised or agreed.
  - (3) Delivery periods start from the date of our order confirmation; their start presupposes the clarification of all technical questions. Compliance with the delivery deadlines also requires the timely and proper fulfillment of the purchaser's obligations. The exception of the unfulfilled contract remains reserved.
  - (4) If dispatch has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.
  - (5) Our delivery obligation is subject to correct and timely delivery to us, unless we are responsible for the incorrect or delayed delivery.
  - (6) If the customer is in default of acceptance or if he culpably violates other duties to cooperate, we are entitled to demand compensation for the damage we incur in this respect, including any additional expenses. We reserve the right to make further claims.
  - (7) If the requirements of Paragraph (5) are met, the risk of accidental loss or accidental deterioration of the purchased item is transferred to the purchaser at the point in time at which the purchaser commences with the acceptance of the goods or with the fulfillment of his other obligations to cooperate is delayed.
  - (8) The delivery deadline is met if the goods have left the Graben-Neudorf warehouse within the delivery deadline.
  - (9) In cases of force majeure, such as fire damage, floods, strikes, lawful lockouts and disease (including epidemics and pandemics), provided that the Robert-Koch-Institute has determined a risk level of at least „moderate“, the affected contracting party is for the duration and to the extent of the effect relieved of the obligation to deliver or accept delivery/purchase. The same applies if the fulfillment of our main and secondary contractual obligations is made unreasonably difficult or temporarily impossible due to other unforeseeable circumstances for which we are not responsible, in particular industrial disputes, official measures, lack of energy, delivery obstacles at a supplier or significant operational disruptions. Furthermore, we are also entitled to withdraw from the contract if the above-mentioned obstacles last more than three months and the fulfillment of the contract is therefore no longer of interest to us. At the customer's request, we will state whether we are making use of our right of withdrawal in good time before the deadline. If acceptance of the delivery or service is unreasonable for the customer as a result of the delay, he can withdraw from the contract.
  - (10) In the event of a delay in delivery, the customer can withdraw from the contract after a reasonable grace period which has expired without result; in the event that our performance is impossible, he is entitled to this right without a grace period. A period of at least 14 days is appropriate, and at least 1 month for custom-made products. Delay in delivery is equivalent to impossibility if delivery is not made for more than 1 month, or 6 weeks for custom-made products. Claims for compensation (including any consequential damage) are excluded without prejudice to Paragraph 11; the same applies to reimbursement of expenses.
  - (11) The exclusion of liability regulated under Paragraph 10 does not apply if an exclusion or limitation of liability for damage resulting from injury to life, limb or health has been agreed which is based on an intentional or negligent breach of duty by the user or an intentional or negligent breach of duty by a legal representative or vicarious agent of the user; it also does not apply if an exclusion or limitation of liability for other damage has been agreed that is based on an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of the user.
- If we culpably violate an essential contractual obligation or a cardinal obligation, liability is not excluded, but limited to the foreseeable damage typical for the contract. In the event of reimbursement of expenses, the above applies accordingly.

## § 5 Transfer of Risk / Packaging Costs / Insurance

- (1) When the goods are handed over to the forwarding agent or carrier, but no later than when they leave our premises, the risk of accidental loss and accidental deterioration is transferred to the customer. The Incoterms 2000 clause "ex works / ex works" (German version) applies.
- (2) If the handover is delayed due to a circumstance for which the customer is responsible or on his instructions, the risk shall pass to the customer on the day of notification of readiness for dispatch. At the express written request of the customer, we are obliged to insure the goods stored by us at his expense. This also applies in cases in which a delivery date has not been expressly agreed, with the proviso that the risk is transferred to the customer 7 calendar days after notification of readiness for dispatch.
- (3) If the customer so wishes, we will cover the delivery with transport insurance; the customer bears the costs incurred.
- (4) Transport and all other packaging in accordance with the packaging regulations will not be taken back. Pallets are excluded. The customer is obliged to dispose of the packaging at his own expense.
- (5) Delivered items are to be accepted by the customer, even if they have minor defects, without prejudice to his rights under §§ 433 ff BGB.

## § 6 retention of title

- (1) We reserve title to all goods delivered until all payments from the business relationship with the customer have been received in full. Insofar as a current account relationship has been agreed between the customer and us, the retention of title also refers to the respective recognized balance. In the event of behavior contrary to the contract, in particular if the customer is in default of payment, we are entitled to take back the goods after setting a reasonable deadline. Taking back the goods constitutes a withdrawal from the contract. After taking back the goods, we are authorized to dispose of them; the proceeds from the sale are to be offset against the purchaser's liabilities - less reasonable disposal costs.
- (2) The customer is obliged to treat the delivered goods with care; in particular, he is obliged to insure them adequately at their replacement value at their own expense against fire, water and theft damage.
- (3) In the event of seizures or other interventions by third parties, the customer must immediately notify us in writing so that we can take legal action § 771 ZPO or raise. If the third party is unable to reimburse us for the judicial and extrajudicial costs of a lawsuit in accordance with § 771 ZPO, the customer is liable for the loss we incur.
- (4) The customer is entitled to resell the goods in the ordinary course of business; However, he already now assigns to us all claims in the amount of the final invoice amount (including VAT) of our claims that arise from the resale to his buyer or third party, regardless of whether the goods have been resold without or after processing. The customer remains authorized to collect this claim even after the assignment. Our authority to collect the claim itself remains unaffected. However, we undertake not to collect the claim as long as the customer fulfills his payment obligations from the proceeds received, is not in default of payment and, in particular, has not filed for insolvency proceedings or suspends payments. If this is the case, however, we can demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the associated documents and notifies the debtors (third parties) of the assignment. The claim assigned to us in advance by the customer also relates to the recognized balance, provided there is a current account relationship.
- (5) The processing or transformation of the goods by the customer is always carried out for us. If the goods are processed with other items that do not belong to us, we acquire co-ownership of the new item in the ratio of the value of the goods (final invoice amount including VAT) to

the other processed items at the time of processing. The same applies to the item resulting from processing as to the goods delivered under reservation.

- (6) If the goods are inseparably mixed with other items that do not belong to us, we acquire co-ownership of the new item in the ratio of the value of the goods delivered by us (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the purchaser's item is to be regarded as the main item, it is agreed that the purchaser transfers proportional co-ownership to us. The customer shall keep the sole or joint ownership for us.
- (7) We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realizable value of our securities exceeds the claim to be secured by more than 10%; the selection of the securities to be released is incumbent on us.

## § 7 Warranty and Liability

- (1) The purchaser's rights of defects presuppose that he has properly fulfilled his inspection and complaint obligations according to § 377 BGB. Material defects in the goods must be reported in writing immediately, at the latest 7 days after delivery. Material defects that could not be discovered within this period, even with the most careful examination, must be reported in writing immediately after discovery, at the latest before the agreed or statutory limitation period has expired. In the event of an insignificant reduction in value or suitability of the goods, our liability for material defects is excluded. If the goods have already been resold, processed or redesigned, the customer only has the right to reduce the price.
- (2) If there is a defect for which we are responsible, we are entitled, at our option, to repair or replace the goods. The prerequisite for this is that the defect is not insignificant. In the event of repairs, we are obliged to bear the transport, labor and material costs, provided that these are not increased by the fact that the delivered goods were brought to a location other than the place of performance. Our information on the subject of the delivery as well as our representation of the same (e.g. drawings, images) are only approximately relevant, unless the usability for the contractually foreseen purpose requires an exact match. Weight deviations of up to 2% are not considered a defect. As far as permissible, weights can be determined without weighing according to DIN. The surcharges and discounts customary in the non-ferrous metal semis trade in the Federal Republic of Germany (commercial weights) remain unaffected. The number of items, bundles or similar information given in the dispatch note are non-binding for goods designated by weight. Unless an individual weighing is usually carried out, the total weight of the shipment applies. Differences compared to the arithmetic individual weights are distributed proportionally among them.

The customer is obliged to describe to us the conditions under which the goods to be delivered are to be used in every respect and in full. We reserve the right to make design changes in the interest of technical progress, provided that these do not result in any changes in function. If one of the two or both types of this supplementary performance is impossible or disproportionate, we are entitled to refuse it. As long as the customer does not meet his payment obligations to us to an extent that corresponds to the defect-free part of the service, we can refuse subsequent performance.

- (3) If the repair or replacement delivery does not take place within a reasonable period - taking into account our delivery options - or if the repair and / or replacement delivery fails, the buyer can demand a reduction in the remuneration (reduction) or withdrawal from the contract.
- (4) Unless otherwise stated below (Paragraph 6), further claims of the buyer, regardless of the legal reason (in particular claims from breach of main and secondary contractual obligations, reimbursement of expenses, with the exception of those), shall apply § 439 II BGB, tort and other tortious liability) excluded; this applies in particular to damage that has not occurred to the delivery item itself and to claims for compensation for lost profit. This also includes claims that do not result from the defectiveness of the purchased item.
- (5) The above provisions also apply to the delivery of another item or a smaller quantity.
- (6) The exclusion of liability regulated in Paragraph 4 does not apply if an exclusion or limitation of liability for damage resulting from injury to life, limb or health has been agreed that is based on an intentional or negligent breach of duty by the user or an intentional or negligent breach of duty by a legal representative or vicarious agent of the user; it also does not apply if an exclusion or limitation of liability for other damage has been agreed that is based on an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of the user.

If we culpably violate an essential contractual obligation or a „cardinal obligation“, liability is not excluded, but limited to the foreseeable damage typical for the contract; otherwise it is excluded in accordance with paragraph 4.

Furthermore, the exclusion of liability does not apply in cases in which liability is assumed for defects in the delivery item for personal injury or property damage to privately used items according to the Product Liability Act.

It also does not apply to the assumption of a guarantee or the assurance of a property, if a defect covered by it triggers our liability.

In the case of reimbursement of expenses the above shall apply.

- (7) No guarantee is given for damage resulting from unsuitable or improper use, incorrect assembly by the customer or third parties, natural wear and tear, incorrect or negligent treatment, improper changes or repair work carried out by the customer or without our prior consent Third party. We also give no guarantee for a specific purpose or a specific suitability of the goods; unless otherwise expressly agreed in writing; otherwise the risk of use and use lies exclusively with the purchaser.
  - (8) Claims for supplementary performance, compensation for damages and compensation for use expire one year after delivery of the purchased item. This does not apply to an item that has been used for a building in accordance with its normal use and has caused its defectiveness; in this case the statute of limitations does not apply until after 5 years. The claims for a reduction in price and the exercise of a right of withdrawal are excluded if the claim for subsequent performance is statute-barred.
  - (9) In the case of S. 3, the customer can, however, refuse to pay the purchase price insofar as he would be entitled to do so due to the withdrawal or the reduction in price; in the event of exclusion of withdrawal and a subsequent refusal to pay, we are entitled to withdraw from the contract.
  - (10) Claims from manufacturer recourse remain unaffected by this section.
- If an acceptance has been agreed, it can only take place in the delivery plant or our warehouse immediately after notification of readiness for acceptance. The buyer bears the personal acceptance costs, the material acceptance costs are calculated according to our price list or the price list of the supplier. If the acceptance does not take place through no fault of ours, not on time or not completely, we are entitled to dispatch the goods without acceptance or to store and invoice them at the buyer's expense and risk.

## § 8 Resignation of the customer and other liability on our part

- (1) The following regulations apply to breaches of duty outside of liability for defects and should neither exclude nor limit the statutory right of withdrawal. Likewise, statutory or contractual claims to which we are entitled should neither be excluded nor limited.
- (2) The customer can withdraw from the contract if the entire service becomes finally impossible; the same applies to inability. The customer can also withdraw from the entire contract if, in the case of an order for similar items, the execution of part of the delivery must be impossible by our representatives and he has no interest in the partial performance; if this is not the case, the customer can reduce the consideration accordingly; the right of withdrawal does not apply to insignificant breaches of duty.
- (3) If there is a delay in performance and the customer grants us a reasonable deadline for performance after justifying the delay and if this grace period is not met, the customer is entitled to withdraw. If the customer requests a different design of the delivery item at any point prior to delivery, the delivery period will be interrupted until the day on which the delivery was made and, if necessary, extended by the time required for the other design.
- (4) Withdrawal is excluded if the customer is solely or predominantly responsible for the circumstance that entitles him to withdraw or if the circumstance for which we are responsible occurs at the time of the customer's default in acceptance. In the event of impossibility in the aforementioned cases, we retain our right to the consideration in accordance with Section 326 (2) BGB.
- (5) Further claims by the purchaser, regardless of the legal reason (in particular claims arising from negligence when concluding the contract, breach of main and secondary contractual obligations, reimbursement of expenses, tort and other tortious liability) are excluded; this applies in particular to damage that has not occurred to the delivery item itself and to claims for compensation for lost profit; This also includes claims that do not result from the defectiveness of the purchased item. This does not apply if the cause of the damage was based on intent or gross negligence on our part, our legal representatives or vicarious agents. This also does not apply as far as damage from culpable injury to life, body or health is involved. Likewise, liability is not excluded in the event that a guarantee is assumed, insofar as a breach of duty covered by this triggers our liability. If we culpably violate an essential contractual obligation or a „cardinal obligation“, liability is not excluded, but rather limited to the foreseeable damage typical for the contract.

## § 9 liability for secondary obligations

- (1) If, through our fault, the delivered item cannot be used in accordance with the contract by the customer as a result of neglect or faulty execution of proposals and advice before or after the conclusion of the contract, as well as other secondary contractual obligations, or if damage occurs, the provisions of the §§ 7 and 8 accordingly.

## § 10 Offsetting / Right of Retention

- (1) The customer may only offset against our claims if his counterclaims have been legally established, are undisputed or have been recognized by us.
- (2) The customer is only authorized to exercise a right of retention if his counterclaim is based on the same contractual relationship.

## § 11 Place of fulfillment / place of jurisdiction / applicable law

- (1) Unless otherwise stated in the order confirmation, our place of business in Graben-Neudorf is the place of performance for all liabilities arising from the contractual relationship, in particular for the payments to be made by the customer.
- (2) If the customer is a businessman, our place of business is the place of jurisdiction.
- (3) The law of the Federal Republic of Germany applies; the validity of the UN sales law is excluded.

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