

## **BURGHARDT + SCHMIDT GmbH**

### **Terms and conditions of delivery and sale**

#### **I. Applicable conditions**

1. These terms and conditions of delivery and sale shall apply to all business transactions with the purchaser or other customers (hereinafter referred to as "purchaser"), even if they are not mentioned in later contracts. They shall also apply if the purchaser refers to his own terms and conditions of business. In particular when placing his order or at an earlier or later point in time, unless these have been expressly agreed to in writing. Other terms and conditions shall therefore not become part of the contract even if we do not expressly object to them.

2. By placing an order with us, the purchaser accepts our terms of delivery and sale.

#### **II. Offer and conclusion of contract**

1. Our offers are subject to change and non-binding, unless otherwise stated in the order confirmation. An order is accepted by us via written declaration, by notification of our readiness to deliver or by carrying out the delivery; for the effectiveness of the declaration of acceptance its receipt is not required, § 151 BGB.

2. Orders placed orally or by telephone shall only become effective upon our written confirmation. Changes or additions or other agreements to the order also require our written confirmation.

3. Drawings, illustrations, dimensions, weights or other data are only binding for the execution of orders, if this has been expressly agreed to in writing. Gross weights and box dimensions are given without guarantee. We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents; they may not be made accessible to third parties without our express written permission.

4. Samples shall in any case only be considered as approximate quality, display and colour samples.

5. In the case of production parts, the delivery quantity may deviate by 10% from the quantity ordered without this constituting a material defect.

### **III. Prices and terms of payment**

1. Our prices are calculated in Euro and are payable in Euro. All prices are net prices plus legal value added tax and excluding packaging.

2. For material deliveries we will invoice the price plus packaging and transport costs.

3. We reserve the right to increase our prices appropriately in line with cost increases if, after conclusion of the contract, cost increases occur, particularly due to collective agreements or increases in the price of materials. We will provide evidence of such increases to the purchaser on request.

4. The deduction of a discount requires a special written agreement. Unless otherwise stated in the order confirmation, the price is due for payment without deduction within 20 days of the invoice date. Partial invoices, which are issued for larger work performances, are payable without deduction within 10 days of the invoice date.

5. Cheques and bills of exchange shall only be considered as payment after they have been cashed and finally credited. The acceptance of bills of exchange always requires a prior written agreement with us. When accepting bills of exchange and cheques, the bank discount and collection charges will be brought to account, they are to be paid immediately in cash. Further costs resulting from cheques and bills of exchange shall also be borne by the purchaser.

6. Set-off is only permissible with counterclaims of the purchaser recognized by us or that are finally adjudicated. This also applies to the assertion of a right of retention by the purchaser.
7. The purchaser shall make an appropriate advance payment upon request.
8. Value added tax at the statutory rate generally is to be paid by the purchaser.
9. Assignments of claims by the purchaser require our written consent to be effective.
10. As long as the purchaser asserts material defects, the limitation of our claim for remuneration is suspended.
11. Any demand for correction of the invoice by the purchaser must be made in writing and no later than one week after receipt of the invoice, otherwise the invoice shall be deemed accepted.

#### **IV. Delivery and execution time**

1. Delivery and execution dates are only valid if they are expressly confirmed by us in writing.
2. The delivery period shall commence with confirmation of the order, but not before the purchaser has provided any documents, permits, releases to be procured by him and not before receipt of an agreed down payment; it therefore presupposes, among other things, that all technical questions have been clarified.
3. The agreed delivery and execution deadlines are binding for both parties. They shall be extended by a reasonable period of time if the purchaser is in arrears with his obligations to us - i.e. if he himself does not fulfil them as agreed - or if weather conditions do not permit professional work.

4. The delivery period shall be deemed to have been complied with if notification of readiness for dispatch has been given or the delivery item has left the works before the period expires.

5. The delivery period shall be extended in the event of measures related to industrial disputes. This applies particularly to strikes and lockouts, as well as in the event of unforeseen hindrances beyond our control, e.g. war, trade restrictions, operational disruptions, delays in the delivery of essential materials, insofar as such hindrances demonstrably have a considerable influence on the supply of the delivery item. This also applies if the circumstances occur at subcontractors. The delivery period shall be extended in accordance with the duration of such measures and obstacles.

We shall also not be held responsible for the above-mentioned circumstances if they occur during an already existing delay. In important cases, we will inform the purchaser as soon as possible about the beginning and end of such obstacles.

6. The purchaser shall only be entitled to withdraw from the contract if, in the above-mentioned cases, he sends a written reminder after expiration of the agreed upon, possibly extended, delivery and performance period and this is not carried out within a reasonable extension to be set after receipt of the reminder letter from the purchaser. In the case of delivery and execution periods determined by calendar, the period of extension to be set shall commence upon expiry of the same. The circumstances described under No. 5 also entitle us to withdraw from the contract in whole or in part, regarding the part not yet fulfilled.

7. As compensation for damages due to non-fulfilment, default of acceptance or violation of other obligations to cooperate, we can demand 25% of the price without deductions, unless the purchaser can prove that no damage was incurred at all or not in the amount of the lump sum. In all other respects, as in the case of custom-made products or special deliveries, we reserve the right to assert a higher damage, which has to be demonstrated, including any additional expenses.

8. The risk of accidental loss or accidental deterioration of the delivery or purchase item shall pass to the purchaser at the moment in which he is in default of acceptance.

9. We are entitled to make partial deliveries without this constituting a material defect.

## **V. Scope of Delivery**

1. The scope of delivery is determined by our written order confirmation.
2. We reserve the right to make design or form changes that are due to improvements in technology or to legal requirements during the delivery period, provided that the delivery item is not significantly altered and the changes are bearable for the purchaser.

## **VI. Cancellation costs**

If the purchaser withdraws from the issued order without justification, we can demand 25% of the sales price for the costs incurred by the processing of the order and for loss of profit, without prejudice to the possibility of claiming higher actual damages. The purchaser may prove that the damage was less.

## **VII. Packaging and shipment**

Packaging becomes property of the purchaser and will be charged by us. Postage- and packaging expenses will be invoiced separately. Shipment is made according our best discretion.

## **VIII. Acceptance and transfer of risk**

1. The purchaser is obliged to accept the delivery item. In the absence of any agreement to the contrary (delivery by us), the handover shall take place in Remchingen "ex works".

2. If the purchaser is in arrears with the acceptance of the item of purchase more than 14 days after receipt of the notification of provision, either intentionally or through gross negligence, we shall be entitled to withdraw from the contract or to demand compensation for damages (Sections IV, 7) after setting a further 14-day period of grace. Setting a grace period shall be deemed unnecessary if the purchaser seriously and finally refuses acceptance or is obviously not able to pay the purchase price even within this period.

3. The risk shall pass to the purchaser at the latest upon dispatch or collection of the delivery item, even if partial deliveries are made or, in individual cases, we have exceptionally taken over other services, for example the costs of upkeep or delivery on order. If the purchaser declares that he will not accept the delivery item, the risk of accidental loss or accidental deterioration of the delivery item shall pass to the purchaser at the moment of refusal.

## **IX. Liability for material defects**

1. The purchaser must notify us in writing of any visible defects or incorrect deliveries immediately, but at the latest within 5 working days of receipt of the delivery. In any case the notification must be made before processing or further use. Defects which cannot be detected within this period even after careful inspection must be reported in writing immediately after discovery.

2. We assume liability for defects in delivery items in the following manner, insofar as there is a defect in the delivery item which we are responsible for:

a) During a period of 12 months from delivery of the delivery item, the purchaser may claim subsequent performance at our discretion (elimination of defects or replacement). The purchaser shall, after agreement with us, give us the necessary time and opportunity to carry out all the repairs and replacement deliveries we deem necessary; otherwise we shall be released from liability for the consequences arising therefrom. Only in urgent cases where operational safety is endangered or to prevent disproportionately large damage, in which case we must be informed immediately, does the purchaser have the

right to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the necessary expenses from us.

b) In the event of remedy of the defect, we shall bear all expenses necessary for the purpose of the removal of the defect insofar as these are not increased by the fact that the object of sale has been taken to a place other than the place of performance, but in any case only to a maximum of half.

c) Within the framework of the statutory provisions, the purchaser shall have the right to withdraw from the contract if we - taking into account the statutory exceptions - allow a reasonable period of time set for us, for the repair or replacement delivery due to a material defect, to elapse fruitlessly. If the defect is only insignificant, the purchaser shall only be entitled to a reduction of the contract price. The contractual partners right to reduction shall otherwise be excluded.

d) Natural wear and tear is in any case excluded from the liability for material defects. This shall also apply to insignificant deviations from the agreed quality; insignificant impairments of the usability or deviation from the customary use; in case of natural wear and tear or damage that occurs after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable operating materials, defective construction work, unsuitable building ground or that occurs due to special external influences that are not agreed upon in the contract; the same applies to cases of non-reproducible software errors.

If the Purchaser or a third party carries out improper modifications, repair work or other interventions, no claims for defects shall exist for these and the consequences thereof.

3. Guarantees in the legal sense shall only be provided to the purchaser if they are expressly designated as such. However, we do not give any guarantees, especially not for quality, intended use, durability, etc.

4. The purchaser may only revert to us in accordance with § 478 BGB (German Civil Code) to the extent that the purchaser has not made any agreements beyond the

statutory claims for defects with his customer. The provisions of these terms and conditions also apply to the scope of the purchaser's right of recourse.

5. We shall only be liable for further claims and rights of the purchaser - irrespective of the legal basis - in cases of intent and gross negligence. XI. shall apply to claims for damages.

6. Otherwise, liability is also excluded for material damage that has not occurred to the delivery item (consequential damage).

## **X. Retention of title**

1. The delivered items remain our property until full payment of all claims arising from our business relationship, including those that arise subsequently, including all accessory claims and until the bills of exchange or cheques issued for this purpose have been honoured.

2. In the event of conduct contrary to the contract on the part of the purchaser, in particular default of payment, following a reminder we shall be entitled to take back the delivery item and the purchaser shall be obliged to surrender it.

3. The assertion of the reservation of title and the seizure of the delivery items by us shall not be deemed as withdrawal from the contract, unless this has been expressly declared by us in writing.

For use in business transactions with merchants, a legal entity under public law or a special fund under public law, the following also applies:

4. The purchaser is entitled to resell the delivery items in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the purchase price agreed between us and the purchaser (including value added tax) which accrue to the purchaser from resale, irrespective of whether the delivery items are resold without or after



processing. The purchaser is authorised to collect these claims after their assignment. Our authority to collect the receivables ourselves remains unaffected by this; however, we undertake not to collect the receivables as long as the purchaser properly meets his payment obligations and is not in default of payment. Should this, however, be the case, we can demand that the purchaser discloses the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

5. The processing or transformation of the items by the purchaser will always be carried out for us. If the delivery items are processed with other items not belonging to us, we shall acquire co-ownership of the new product in proportion to the value of the delivery items to the other processed items at the time of processing.

6. The purchaser may neither pledge the delivery items nor assign them as security. In the event of seizure, confiscation or other dispositions by any third parties, the purchaser must inform us immediately in writing and provide us with all information and documents required to protect our rights. Enforcement officers or third parties involved must be informed of our ownership.

7. We undertake to release the securities due to us at the purchasers request, to the extent that the value of the claims to be secured, insofar as these have not yet been settled, exceeds their value by more than 20%; the selection of the securities to be released is at our discretion.

## **XI. Claims for damages**

1. The claims of the purchaser for damages and reimbursement of expenses (hereinafter referred to as "claims for damages") for whatever legal reason, in particular for breach of contractual duties and from tort are excluded in accordance with the provisions of this section.

2. We are only liable to the purchaser for direct damages. Our liability is limited to typically foreseeable damages. Completely excluded are claims against us for indirect damages, consequential damages, penalties of any kind as well as further damages such as loss of profit and / or loss of production.

3. This exclusion of liability shall not apply in the event of intent or gross negligence on the part of our executive bodies, legal representatives, employees and other vicarious agents, in the event of culpable injury to life, limb or health, in the event of fraudulently concealed defects, within the framework of a guarantee promise, or in the event of mandatory liability under the Product Liability Act for personal injury or property damage to privately used objects, provided that this does not constitute a breach of main contractual obligations. The claim for damages for the violation of material contractual obligations is, however, limited to the foreseeable damage typical for the contract, provided that there is no intent or gross negligence or liability for injury to life, limb or health. A change in the burden of proof to the disadvantage of the purchaser is not associated with the abovementioned provisions.

4. If the Purchaser is entitled to any claims for damages at all, such claims shall become barred upon expiration of the limitation period applicable to claims for material defects pursuant to Section IX of these Terms and Conditions. This does not apply to claims for damages due to injury to life, limb or health and/or claims for damages due to damage caused by us through gross negligence or intent. In this respect the statutory limitation periods shall apply. Further excluded are claims for recourse in the cases of § 479 I BGB. In the latter case a limitation period of three years shall apply. In the case of claims for damages according to the Product Liability Act, the respective statutory limitation regulations shall apply, unless these cannot be waived or shortened. In the latter case, the shortened statute of limitations still permissible shall apply.

## **XII. Installation or setups**

1. Material deliveries are invoiced by us plus packaging and transport costs. For overtime, night work, work on Sundays or public holidays we charge additional costs. Hourly wage

work will be charged on the basis of submitted report proofs. Special expenses due to work difficulties also entitle us to charge these appropriately.

2. In determining the price we assume that the work can be carried out without interruption. Our quoted prices are based on the assumption that the locations in which an agreed assembly is to take place are professional and level and are properly completed before our work. Otherwise we are entitled to carry out and charge for this work. Work that must be carried out beyond the scope of the offer will be invoiced against proof of hours worked and material consumption. Should it be necessary to travel, the corresponding costs will be charged.

### **XIII. Software use**

1. Insofar as software is included in the scope of delivery, the purchaser is granted a non-exclusive right to use the software supplied including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

2. The Purchaser may only copy, revise, translate or convert the software from the object code to the source code to the extent permitted by law (§§ 69 a ff. UrhG [Copyright Act]). The purchaser undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without our prior express consent.

3. All other rights to the software and the documentation, including copies, shall remain with us or the software supplier. The granting of sub-licenses is not permitted.

### **XIV. Place of performance and jurisdiction**

1. Place of performance is Remchingen.

2. For all disputes arising from the contractual relationship, if the purchaser is a merchant, the local court of Pforzheim or the regional court of Karlsruhe (also Chamber for Commercial Matters) or the purchaser's general place of jurisdiction is agreed as the place of jurisdiction at our discretion. The same shall apply if at the time of the commencement of legal proceedings the purchaser has moved his registered office abroad. The above shall also apply to actions on cheques and bills of exchange.

3. German law applies exclusively, excluding the laws on the international purchase of movable goods (CISG).

## **XV. Miscellaneous**

1. Transfers of rights and obligations of the purchaser from the contract concluded with us require our written consent to be effective.

2. Should one or more of the above provisions be or become invalid in whole or in part, the validity of the remaining provisions shall not be affected. The ineffective provision shall be replaced by an effective provision which most closely corresponds to the intended economic purpose. The same applies if during execution of the contract the need for an amendment becomes obvious.