



## General Terms and Conditions of Delivery and Payment of Ernst Böcker GmbH & Co. KG, Ringstraße 55-57, 32427 Minden, Germany

### 1. General:

- a) Our deliveries and performance take place exclusively in accordance with the following general terms and conditions of delivery and payment.
- b) Deviating and conflicting terms are only binding for us if we have expressly accepted them in writing.
- c) These terms and conditions apply for all future business between the parties also when being aware of deviating and conflicting terms we deliver the goods.
- d) These terms and conditions only apply to business men, legal entities under public law or special funds under public law as seen under § 310 part 1 German Civil Code (BGB).
- e) Subsequent changes to orders, changes of amounts and cancellations will only be accepted by us if no costs have been incurred. Otherwise the incurred costs must be paid by the customer.

### 2. Orders:

- a) Our offers are non-binding. Offers are binding for us only when we have confirmed them in writing. The issue of an invoice to the customer replaces this written confirmation.
- b) The customer must check that our order confirmation is correct and complete immediately and inform us of any deviations to his order without delay. If the customer unconditionally accepts our delivery with deviations to his order the deviation shall be considered authorized.
- c) All performances and measurements stated in our offers and/or order confirmations shall be considered approximate. Minor differences in illustrations, drawings and descriptions are possible.
- d) Descriptions of our performance in drawings, illustrations, calculations, brochures, catalogues, , from models or from the internet or from other documents and publications which are freely available to the public do not constitute a quality agreement as seen in § 434 part 1 sentence 2 German Civil Code BGB. They only become a contractual component when expressly referred to in the order confirmation.

### 3. Prices and Payments:

- a) The prices named in our offers remain valid on the condition that the order data on which the offer is based has not changed at longest, however for 4 months after receipt of the offer by the customer.
- b) Our prices shall apply ex-works in Minden, Magdeburger Straße 1, (EX Works (EXW) in accordance with INCOTERMS 2020), excluding freight and postal costs, costs for service performance (e.g. analysis, kosher/halal certification, customs documents) and the respective applicable VAT and other official fees. These additional costs will be shown separately in the invoice.
- c) Payment must be made within 30 days of receipt of the invoice without deduction free of charge. Payment will be considered effected when the sum is at our disposal.
- d) If our customer is in arrears we have the right to demand interest of 9 percentage points p.a. over the base interest rate for the period of default in accordance with § 247 of the German Civil Code BGB. The assertion of further damages by default is expressly reserved.
- e) The customer can only offset with an uncontested or legally established claim. He only has a right of retention when it is based on claims from the same contractual relationship.
- f) The customer does not have the right to assign his claims from the contractual relationship to third party. This is not the case when it is a monetary claim.
- g) Should the financial situation of the customer worsen considerably after conclusion of the contract or if the severity of the financial situation is only apparent after conclusion of the contract, we have the right, in the case of an endangered return to refuse to deliver undelivered goods or to demand appropriate advance payments or security.
- h) If advance payments and securities are not made within an appropriate time we can, irrespective of further damage claims, withdraw from the contract or cancel it.

### 4. Delivery and Transfer of Risk:

- a) Delivery presupposes customer's timely and proper fulfillment of obligations. The objection of the contract not being fulfilled remains reserved. Further we have the right to delay the delivery as long as the customer has not met his payment obligations for previous deliveries without justification.
- b) We endeavor to keep to the delivery dates specified by our customer. Delivery deadlines are only binding when agreed in writing. A delivery deadline is deemed to have been met when the customer is informed that the goods are ready for delivery up to or before its expiry date. If dispatch was agreed on, the delivery deadline is the time of handover of the goods to the person responsible for dispatch.
- c) The delivery deadlines depend on the size of the individual order. The goods to be delivered are often produced after a binding order has been placed. If we are affected by measures within the framework of industrial disputes, in particular strikes and lockouts or if unforeseeable occurrences arise which our

outside our control, e.g. traffic or operational disruptions, shortage of materials or energy, delay in delivery from a sub-supplier, etc. our delivery deadline is extended by the length of the delay with the addition of an appropriate starting up period. This is also the case when our customer neglects on his part to fulfil the necessary acts of cooperation or delays the same or our customer causes changes to the goods.

d) If there is a performance delay of more than 4 months due to the above reasons which are outside our control, we can withdraw from the contract. Other rights of withdrawal remain unaffected. In as far as it is reasonable for our customer to accept partial deliveries we reserve this right.

e) The delivery and the transfer of risk connected with it take place categorically EX works (EXW), Minden, Magdeburger Straße 1, in accordance with INCOTERMS 2020. On notice of readiness for dispatch or at the latest on the goods leaving the place of dispatch the transfer of risk of accidental loss or accidental deterioration transfers to the customer.

f) Only when specially agreed by us and the customer will we hire a carrier or haulage contractor of our choice. In such a case the risk is transferred to the customer at latest on handover of the goods (whereby the beginning of the loading process is definitive) to the person assigned to carry out the delivery or when the goods have left our warehouse for the purpose of delivery. This applies regardless of the question of assumption of delivery or carriage costs. If nothing otherwise is agreed on, the method of delivery, packaging, transport route etc. is at our discretion. If dispatch, delivery or acceptance of the goods is delayed for reasons the customer is responsible for or if the customer is in default of acceptance for other reasons the risk is transferred on notice that the goods are ready to be dispatched, at latest, however, when they leave the place of dispatch.

g) Transport insurance will only be taken out on special agreement at the wish of the customer at his expense.

h) With deliveries with a foreign dimension we are not obliged, without a separate written agreement, to acquire documents and proof needed by the customer for export, transit and import of the goods out/through/ into other countries.

i) In the case of customer's default of acceptance or other culpable violation of cooperation obligations we have the right to demand compensation for the damages occurred and possible additional expenses.

j) Storage costs will be paid by customer. If storage is undertaken by us the costs will be 0.25 % of the sum on the invoice of the goods to be stored per each full week. The contractual parties reserve the right to the assertion and proof of further or lower storage costs.

### 5. Warranty:

a) The period for limitation for material defects in the sale of newly produced goods is 1 year. A shortening of the period of limitation as shown in paragraph 1 does not apply in cases of intent and gross negligence and also not damage to life, the body or health, in the case of malice or in the case of our taking over a guarantee.

b) If a defect exists the customer can demand rectification in accordance with § 439 German Civil Code BGB, whereby we can choose between rectifying the defect and the delivery of defect free goods.

c) All claims of the customer on the grounds of material defects require that he has fulfilled his obligation to inspect and inform of the defects in accordance with § 377 HGB German Commercial Law, otherwise the claims are irrelevant: the customer must notify defects in writing without delay, at the latest within ten days after receipt of the goods. Defects which were not discovered in spite of thorough examination must be reported to us in writing without delay after their discovery.

d) If a defect claim is made wrongly we are entitled to demand that the customer reimburse us for additional expenditure caused.

e) Customer's claims for compensation or compensation for fruitless expenses on whatever legal grounds exist solely according to the measures laid out in paragraph 6 of these terms and conditions.

### 6. Liability:

a) In the case of willful or gross negligence on our part or by our representatives or vicarious agents we are liable according to the provisions of the law; as is the case when important contractual obligations are breached. In as far as no willful breach of contract occurs our compensation liability is limited to foreseeable and typically occurring damage.

b) Liability for culpable injury to life, body or health and liability in accordance with the product liability laws remain unaffected.

c) In as far as nothing has been expressly agreed upon above, our liability is excluded. This also applies for our employees, workers, agents and vicarious agents.

### 7. Property Rights:

a) In as far as nothing else has been agreed upon we are obliged to make the delivery in the country of the delivery location free of industrial property rights or third party industrial property rights – hereafter the "Property Rights".

b) In the case of delivered goods breaching the property rights of third party we will at our own discretion and at our expense make changes to the delivered object or exchange it so that third party rights are no longer breached, but the delivered object continues to fulfill the contractually agreed function, or by concluding a license agreement with third party procure the right of use for the customer. If this is not possible under reasonable conditions the customer has the right in accordance with the measures under paragraph 5 of these terms and conditions to withdraw from the contract or to reduce the purchase price appropriately. Possible damage compensation claims of the customer are subject to the restrictions of paragraph 6 of these terms and conditions.

c) In the case of legal violations by other manufacturers of products delivered by us we will at our discretion assert our claims against the manufacturers and sub-suppliers for customer's invoice or assign them to the customer. Claims against us exist in these cases in accordance with the measures of paragraph 7 only when legal enforcement of the above named claims against the manufacturer and sub-suppliers was unsuccessful, or was futile due to insolvency etc.

d) The above named obligations exist for us only in as far as the customer informs us in writing immediately of the claims asserted by third party.

e) Claims of the customer do not exist in as far as he himself is responsible for the breaching of property rights. Claims of the customer are excluded when the breach of property rights is based on particular requirements of the customer, by a use not foreseeable by us or was caused by the delivery being altered by the customer or used with products not delivered by us and we are not responsible for the property rights breach.

#### **8. Reservation of Title:**

a) The goods delivered by us remain our property until all payments from our business relationship with the customer have been received. The goods must be handled with care and if necessary appropriately insured.

b) The customer is only entitled to sell on the goods in an orderly course of business whereby he assigns his demands from the resale to us, irrespective of whether the goods were processed before or not before being resold. We accept this assignment. The customer is authorized even after the assignment to collect these demands. This does not affect our right to collect the demands ourselves. The customer must inform us about the assigned demand and its debtor, provide all necessary information for the collection of the debt, and inform the third party of the assignment. If the customer fulfills existing payment obligations to us as seen in the contract we will not collect the debts ourselves. We may rescind the authorization to resell if our customer does not properly fulfill his contractual obligations.

c) The customer is not authorized to encumber reserved goods or assign them as security. Influence of third party on the goods, in particular encumbrances must be reported to us immediately in writing. In as far as the third party is not in a position to reimburse us for costs arising from asserting our proprietary rights in or out of court, the customer is liable for this.

d) If our claims exceed the value of our existing security by more than 20% we are obliged at the request of the customer or third party disadvantaged by over-securing to release securities. We have free choice on what kind of securities we release.

e) When goods delivered by us or which are our property are processed we remain manufacturer in accordance with § 950 BGB German Civil Code and retain ownership of the product at all stages of the processing. If third party is involved in the processing we are limited to a co-ownership share at the value of the invoice amount of the delivered reserved goods. The property thus acquired shall be deemed as reserved property.

f) If goods delivered by us to which we hold title are connected or mixed inseparably with other goods to which we do not hold title we acquire co-ownership of the new product/s in a ratio of the goods delivered by us to the

other connected, mixed goods or objects at the time when the connection or mixing took place. If the connection or mixing is carried out in such a way that the customer's part is considered to be the main part it is hereby agreed that the customer transfers proportional joint ownership to us.

g) If the law of the country of import does not permit retention of title as described above the customer is obliged at his expense without delay to acquire other suitable security for the delivered goods or other security at reasonable discretion (§315 BGB).

h) If we withdraw from the contract on the grounds of customer's behavior being contrary to the terms of the contract - in particular default in payment-(realization) we have the right to demand the return of the reserved goods.

#### **9. Confidentiality:**

a) The contractual parties undertake to treat as confidential, before or during execution of the contract and after the contract has ended, all objects received from or revealed by the other party (e.g. illustrations, descriptions, drawings, calculations and other documents or information) which are legally protected, or contain business or trade secrets or are indicated as being confidential, other than when they are in the public domain and not a violation of the confidentiality obligation. The contractual parties undertake to keep these objects in such a way that third party has no access to them.

b) The customer shall only give access to the contractual objects to those employees who need access to carry out their professional tasks. Before giving them to third party our express written agreement must be obtained by the customer. The customer must instruct these persons on the confidentiality requirements of the objects.

c) The customer must, at our request, return these documents including any copies to us, when they are no longer necessary in the regular course of business or if negotiations do not result in the conclusion of a contract.

#### **10. Place of Implementation, Jurisdiction, Validity:**

d) In as far nothing different is shown in the confirmation of the order the place of implementation and jurisdiction for deliveries and payments is the place of our registered office in Minden/Westphalia.

e) If the customer is a business man, legal entity under public law or public law fund or if he does not have a place of general jurisdiction in the Federal Republic of Germany the competent place of jurisdiction is Minden/Westphalia for all disputes arising from the contract including cheque-, bill of exchange and legal documents procedures. We also have the right to sue the customer at his own place of general jurisdiction.

f) All contractual relationships are subject exclusively to German law. Use of UN-sales law is expressly excluded.

g) Should there be differences between the German version and a translated version of these general terms and conditions, the German version is definitive.

h) Should individual terms of the general terms and conditions of delivery and payment be or become invalid the effectiveness of the remaining terms shall not be affected. Together with the customer we will replace the invalid terms within reasonable bounds and in good faith with such regulations which come closest to the economic purpose of the contract, without making a significant change to the contract. The same applies if a matter in need of regulation is missing in an explicit regulation.

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