

## **General Delivery Conditions of Bullard GmbH, Deutschland**

### **I. Scope of Validity, Deviating Terms and Conditions, Written Form**

- (1) The following conditions govern all our offers, deliveries, and services, and underlying current and future business relations. For ongoing business relations, they also govern all future transactions without requiring any additional notification thereof.
- (2) These terms and conditions apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business of the Purchaser, even if known to us, will only become a part of the contract and will only be considered accepted if we explicitly agree or have agreed with individual terms in writing.
- (3) In the event that, for particular deliveries, provisions diverging from these terms and conditions are agreed upon in writing, our General Delivery Conditions will apply.
- (4) Any reference to or counter-confirmation by the Purchaser with reference to its conditions of purchase is hereby expressly objected to.
- (5) Quotations, orders, statements of acceptance, order confirmations, revisions, supplements, and other ancillary agreements and arrangements made prior to or upon conclusion of the contract must all be made in writing in order to enjoy full force. Our sales employees are not authorized to conclude verbal ancillary agreements or to make verbal promises that go above and beyond the written agreement.

### **II. Offers, Amendments to the Contract, Changes to the Contract**

- (1) A contract becomes effective unless delivery and/or invoicing does not take place immediately, only upon written confirmation of the order we received, but at the latest upon acceptance of delivery by the Purchaser.
- (2) Samples, trials, drawings, diagrams, measurements, weights or other performance data are not guaranteed properties. They are only binding if they were expressly agreed in writing.
- (3) The Purchaser shall not be entitled to change or cancel the contract. If we accept the contract change or cancellation, the Purchaser must assume all costs arising as well as bear a

processing flat rate of 5% of the order value. In the case of an unjustified contract change or cancellation unacceptable to us, we are entitled to demand from the Purchaser for sustained damage therefrom compensation in the amount of 20% of the order value attributable to the change/cancellation if the Purchaser adheres to the contract change or cancellation after a reasonable grace period. This will not affect the right of the Purchaser to set forth a lower damage and our right to set forth a higher damage. Further claims remain unaffected by this provision.

### **III. Delivery, Delivery Periods and Delivery Dates, Internal Delivery, Force Majeure, Delivery Delay, Partial Deliveries**

- (1) The dates and terms of delivery specified in our order confirmations are not binding unless otherwise agreed.
- (2) The observance of binding or non-binding dates or terms of delivery presupposes the timely receipt of all documents, permits, and releases to be submitted by the Purchaser as well as compliance with the agreed terms of payment and other obligations. Delivery dates and delivery periods shall be regarded as kept if, at its expiry, the object for delivery has been shipped or the Purchaser has received notice that the goods are ready for dispatch.
- (3) In the event of non-delivery or delay in delivery, we will not be liable toward the Purchaser unless we are responsible for the non-delivery and/or delay in delivery. We are entitled to withdraw from the contract if it is established that we are not responsible for not having received supply of the goods ordered. In such a case, we will immediately inform the Purchaser about the non-availability and immediately reimburse any payment already made and/or credit it within the scope of current business relations.
- (4) In the event of force majeure as well as breakdowns occurring here or at our suppliers respectively, such as riots, strikes, and lock-outs, lack of raw materials, orders from higher authorities, etc., which temporarily hinder us without any fault of our own or fault attributable to us from delivering the object of purchase by the deadline agreed to with or without commitment or within the agreed-upon deadline, these deadlines and periods shall be extended upon our immediate notification by the duration period of the hindrance caused by these events. Should such a disruption lead to a delay in services of more than four months, both parties to the contract can withdraw from the yet unfulfilled part of the contract.

- (5) In the event of a delay in delivery, the Purchaser can only demand compensation for damages due to late performance, as well as delivery of the goods in case of our willful or gross negligent conduct. In case of ordinary negligence, our liability is limited to the typical foreseeable damage. Claims for compensation due to loss of profit are excluded.

Apart from that, the Purchaser must grant us a reasonable extended deadline of at least two weeks and warn of refusal of service. Judicial intervention and additional respite as well as threat to refuse performance must be sent by registered mail. After expiry of the additional respite, the Purchaser may withdraw from the contract or demand compensation if delivery is not affected in the meantime. Our liability is also limited -- if we are not guilty of intent or gross negligence -- to the damage typically to be expected.

These limitations of liability correspondingly apply to the conduct of our vicarious agents and assistants. The liability for injury to life, limb, and health remain unaffected by the above limitations of liability. The Purchaser must, at our request, state within an appropriate period, whether it is withdrawing from the contract due to the delayed delivery and/or is requesting compensation in place of performance or whether it is insisting on delivery.

- (6) We are entitled to deliveries and invoicing by installment to the extent reasonable under the circumstances.

#### **IV. Prices, Chance in Price**

- (1) For domestic customers, our prices except as otherwise agreed are in EUR plus value added tax in the currently valid legal rate ex works/warehouse including packaging.
- (2) For foreign customers, our prices except as otherwise agreed are in EUR plus value added tax in the currently valid legal rate, duty unpaid, ex works/warehouse including packaging.

#### **V. Payment Conditions, Set-off and Right of Retention**

Unless otherwise agreed, the purchase price is payable upon transfer of the item purchased; all payments of the Purchaser must be made within 30 days after receipt of invoice without deduction. If payment is not made within the mentioned deadline, the Purchaser shall be in default.

If there are still open claims from previous orders, any agreed granting of discount is excluded.

- (1) We accept bills of exchange and cheques only upon specific arrangement and only on the condition that they are eligible for discount. All bank, discount, and collection charges as well as any taxes are charged to the Purchaser. Bills of exchange and cheque payments moreover require prior written consent.
- (2) If the Purchaser is behind schedule with its payment obligation, we are entitled, without prejudice to other legal claims after expiration of an additional period granted to the Purchaser, to withdraw from the contract, insofar as it is not yet fulfilled, or to demand compensation due to non-fulfillment if payment is not made on time.
- (3) If the Purchaser is behind schedule with payment, we are entitled to demand default interest of 8% above the base interest rate as per § 247 BGB (German Civil Code). We reserve the right in individual cases to assert higher damages incurred.
- (4) If the Purchaser delays payment, or if after conclusion of the contract, circumstances come to our knowledge, which calls its creditworthiness into question, we are entitled to immediately invoice the complete dues of the Purchaser, to demand payments in advance or provisions of security, and to hold off our service or withdraw from the contract upon expiry of a suitable extension period without prejudice to other rights. There is doubt in the creditworthiness of the Purchaser in particular when it stops payments, insolvency proceedings against its assets are started, or an application for opening insolvency proceedings is made and the insolvency proceedings are not opened due to lack of sufficient assets.
- (5) The Purchaser may only offset with counterclaims that are uncontested, recognized by us, or determined to be legally valid. The same goes for the assertion of retention rights unless the retention rights are based on the same individual contract relationship as the demand for payment.

## **VI. Delivery Quantity, Execution**

- (1) For non-generally viable executions, shades or colour of our products, we reserve the right, for technical reasons, to deviate up to 5% above or below the order quantity.
- (2) Design changes as well as slight variations with respect to shades of colour of our products, deviating from the descriptions in our brochures, price lists, and catalogues, are reserved as far

as they are reasonable commercial standard and are deemed reasonable for the Purchaser while taking our interests into account. There is no obligation to change goods already delivered.

## **VII. Packaging**

Insofar as not offered or agreed upon as packaging-free in writing, packaging will be charged at cost-price and is not be taken back. If the Purchaser requests the return of transport packaging, they are to be returned clean and free of impurities, at the Purchaser's cost, to the distribution centre/works to be specified by us.

## **VIII. Transfer of Risk, Default of Acceptance, Shipment**

- (1) Shipment is effected in all cases from our business location or from our distribution centre/works. The risk of deterioration of goods as well as accidental loss shall pass to the Purchaser as soon as the goods are handed over to the person in charge of transportation or has left our storage/works for purposes of shipment. If the Purchaser fails to accept the goods promptly even though it was offered it, the risk shall pass to the Purchaser on advice that the goods are ready for shipment. This shall also apply if carriage prepaid delivery is agreed to.
- (2) If the Purchaser is in default with regard to the acceptance of the delivery it was duly offered, we shall be entitled without prejudice to further claims, to charge 0.5% of the net invoice value monthly for the cost of storage unless the customer proves a lower damage.
- (3) We shall choose the manner of dispatch at our own best discretion. If special packaging regulations of the Purchaser require additional cost with respect to packaging and transport costs, it will be invoiced separately.

## **IX. Damage in Transit**

- (1) Visible damage in transit is to be notified in writing to the deliverer upon receipt of goods and immediately communicated to us in writing. Damage in transit that becomes apparent later shall be immediately communicated to us in writing after they are determined.
- (2) Moreover, for dispatch by rail and post, an official assessment of the damage must be arranged for at the train station or delivery post office respectively.

- (3) No change may be made to damaged pieces before we, or our transport insurance company release(s) the objects.
- (4) If the above stipulations are not adhered to, claims due to damage during transport are ruled out.

#### **X. Obligation to Examine Goods and Give Notice of Defects**

Regardless of the obligation to give notice of defects toward the transport carrier, the Purchaser must examine the delivered goods immediately upon receipt for any possible error in quantity, wrong delivery, or defects. Recognizable defects, wrong delivery, or deviations in quantity that are obvious or become evident during a proper inspection are to be reported to us in writing immediately, but at the latest within ten days upon receipt of the goods. Concealed defects must be reported to us immediately at the latest ten days after their discovery.

#### **XI. Material Defects, Guarantee, Liability**

- (1) If material defects are asserted to us in due time or if we have undertaken a guarantee for certain specification characteristics, we are entitled to supply a replacement or to repair the goods at our discretion.
- (2) If the rectification fails after an unsuccessful second attempt or a one-time replacement, and if the defect could not be eliminated thereby, the Purchaser has the option of withdrawing from the contract or reducing the purchase price. This shall also apply if rectification and/or replacement delivery is unreasonably delayed, unjustifiably refused or becomes impossible and/or are unacceptable to the Purchaser.
- (3) If the material defect can be ascribed to gross negligence or premeditation on our part or on the part of our vicarious agents and assistants, or if the defect is traced to a violation of essential contractual obligations for which we are responsible, or to an injury of life, limb, health for which we are responsible, or if we undertook a guarantee for certain quality features, or if the Product Liability Act applies, the Purchaser can also make a claim for compensation on account of the material defect instead of withdrawal or reduction of purchase price.

In the event of breach of substantial obligations based on ordinary negligence and if the Purchaser incurs financial or material loss as a result, the entitlement to compensation is limited to typically foreseeable losses.

Compensation for loss of profit shall be excluded in case of ordinary negligence.

This limitation of liability correspondingly applies to the conduct of our vicarious agents and assistants.

The application of the Product Liability Law remains unaffected by this limitation of liability.

- (4) Should we choose to repair the defect, we shall bear the costs of the repair. Costs which are incurred because the delivery item has been moved to a location other than the domicile or the contractually agreed delivery location of the Purchaser are borne by the Purchaser unless the transfer corresponds to its contractual use.
- (5) The Purchaser is not entitled to claim under guarantee if we are not responsible for this as per VI, IX, and X. If the Purchaser has drawn on us due to claims on warranty for material defects and if it turns out that either there is no defect or the claimed defect is caused by circumstance that does not obligate us to a warranty, the Purchaser must compensate us for all costs incurred as a result.
- (6) Claims for material defects expire in 24 months calculated from the date of transfer of risk. This shall also apply to claims for which we in exceptional circumstances expressly granted a guarantee of quality.
- (7) Claims due to an insignificant decrease in value or serviceability of the delivery item are not permissible. The limitation of liability does not apply in case of compensation claims due to a material defect, which can be attributed to gross negligence or premeditation or which lead to injury, limb, and health.
- (8) If the delivery items are used goods, all claims for material defects are excluded insofar as we have not as an exception assumed a warranty. This exclusion shall not apply to claims for damages, in case of gross negligence or intent, in case of breach of substantial contractual obligations as well as injury to life, limb, and health for which we, our vicarious agents or assistants are responsible.

- (9) The Purchaser shall retain a right of recourse against us pursuant to § 478 BGB (German Civil Code) only inasmuch as the Purchaser did not conclude agreements with its customer beyond the statutory warranty claims.
- (10) Parts that we replace in the context of a replacement or repair will become our property.

## **XII. Other Claims for Damages**

- (1) Claims of the Purchaser for damages and expenses due to other instances of breach of obligation, in particular protective rights of obligation and/or due to obligations similar to those resulting from legal transactions shall be excluded insofar as there was no gross negligence or intent of breach of essential contractual obligations or injury to life, limb, and health for which we or our vicarious agents and assistants are responsible.

If we are liable for damages based on ordinary negligence, the claim for damages is limited to the typically foreseeable losses, and in particular, a claim for a loss of profit shall be excluded.

- (2) This limitation to liability shall also apply to actions in tort. A liability as per the Product Liability Law remains unaffected by this regulation.
- (3) Claims for damages due to other breaches of duties regulated in this section that do not arise from a material defect expire within one year after the conclusion of the year in which the claim has arisen and the contractor has been made aware of the circumstances upon which the claim is based or must have become aware of the said circumstances in the absence of gross negligence. The maximum period of limitation regulated in § 199 BGB (German Civil Code) remain unaffected therefrom.

The constraint on the statutory periods of limitation shall not apply to claims for damages due to gross negligence or intent, in case of breach of substantial contractual obligations as well as injury to life, limb, and health for which we are responsible, as well as a violation of the Product Liability Law by us or our vicarious agents or assistants. § 479 BGB (German Civil Code) shall not be affected for statute of limitations.



**XIII. Title Retention**

- (1) We retain ownership of the delivered goods as conditional commodity until complete fulfillment of all claims arising from the business relations, for whatever legal grounds.
- (2) The Purchaser has the right to dispose of the retained goods in the course of normal business activity under retention of title. However, it is entitled to pledge or assign the goods only with our consent. The Purchaser now assigns to us all claims against its customers arising from the resale of the retained goods; we hereby accept this assignment. The Purchaser remains entitled to collect the assigned account receivable as long as it has not defaulted in its payment obligations to us, it is not in payment default or falls into a financial collapse. If the authorization to collect is eliminated, the Purchaser must notify us upon request all information required for collection regarding assigned claims, in particular the name and address of the debtors, the amount of the claims and the dates of the associated invoicing, and to inform its debtors of the assignment.
- (3) Any handling and processing, combination and mixing with other goods subject to reservation shall be done by the Purchaser on our behalf, without this giving rise to obligations for us. In the event of any treatment and processing, combination and mixing of the retained goods with goods that are not our property, we shall be entitled to co-ownership of the new object in the ratio of the invoice value of the other processed goods at the time of the processing and combination, combination or mixing.

The same shall apply if the Purchaser acquires sole property of the new object. The new object is reserved goods according to these conditions and will be stored by the Purchaser for us free of charge.

If the reserved goods are together with other goods, regardless of whether it is resold without or after working and processing, connecting or mixing, the above agreed assigned in advance is valid only for the amount of the invoice value of the reserved goods sold together with the other goods. Incidental claims in connection with the reserved goods, in particular insurance claims, shall be assigned to the same extent. We now accept these assignments.

- (4) In the event that a third party asserts rights by attaching, seizing, otherwise encumbering or encroaching, the Purchaser must inform us immediately and promptly inform the third parties of our reservation of title. If the Purchaser has not just temporarily suspended its payments, if it files petition to institute solvency proceedings against its assets or if insolvency proceedings are instituted against its assets, it is obliged upon our request to immediately return the articles to

which we still hold title. Furthermore, the Purchaser is obliged, in the event of breach of contract, in particular repeated default of payment, upon request within an appropriate deadline to return the reserved goods to us. Moreover, it must, upon our request, immediately send us a list of the reserved goods still available, including those that have already been worked and processed, mixed or blended with other goods, together with a list of claims we ceded to third party debtors.

- (5) In our withdrawal of reserved goods, the contract is cancelled only if we expressly state this in writing. We are entitled to set for the Purchaser in written form an appropriate time for fulfilling its obligations and to announce the refusal of acceptance of performance in the case of non-fulfillment in due time as well as the sale of the reserved goods by setting off claims to which we are entitled. If the debts are not fulfilled within the set time limit, we can sell the goods in the open market. In this case, the cost of disposal will be charged to the Purchaser.
- (6) The Purchaser is obliged to sufficiently insure the goods in our ownership or co-ownership and to maintain insurance protection. Proof thereof must be given to us upon request. The Purchaser herewith assigns to us the claims against its insurance company in case of damage to the extent that such claims relate to goods we own or co-own; we accept this assignment.
- (7) Upon request, we are obligated toward the Purchaser to release the securities to which we are entitled, pursuant to the above provisions to the extent that the value exceeds our claims by 10% or more. We will exercise equitable discretion on the securities we choose to release.

#### **XIV. Place of Fulfillment, Legal Domicile, Applicable Law, Partial Invalidity**

- (1) The place of fulfillment for delivery, performance and payment, unless agreed upon otherwise, is our place of business.
- (2) The exclusive place of jurisdiction for all disputes arising from the business relationship existing between the parties is our place of business. We are in addition entitled to, but not obligated, to file a suit at the Purchaser's principal place of business.
- (3) All legal relations between us and the Purchaser in relation to this contractual relation are subject to the laws of the Federal Republic of Germany with the exclusion of the UN Purchasing Law (CISG).

- (4) Should individual clauses of these General Delivery Conditions or a stipulation within the scope of other agreements of the parties in relation to the delivery agreement existing between them be or become ineffective, it will not affect the validity of all other stipulations or agreements. In place of the invalid regulations, the parties undertake to reach such a legally valid regulation that comes as close as possible to the commercial purpose of the invalid clause.