

General Terms and Conditions of Sale

I. Conclusion of a contract

1. All our deliveries and services shall be subject exclusively to the Terms and Conditions set out below. Buyer's terms and conditions of purchase are hereby precluded.
2. All our proposals shall be subject to change without notice. A contract shall be deemed brought about only if confirmed by us in writing. All our statements must be in writing to be effective. These Standard Terms and Conditions of Sale shall extend to any future transactions with Buyer.

II. Payment clauses

1. All payments shall be made without deduction and must be at our complete disposal on the due date. Buyer shall not be entitled to offset against a claim unless such claim is undisputed or recognised by declaratory judgment, or to assert any right of retention unless such right is based on the same contractual relationship.
2. In the event of default in payment interest will be charged at a rate of 8 per cent above the basic interest rate in accordance with Section 247 of the German Civil Code (BGB).
3. Should subsequent circumstances considerably change Buyer's economic situation, putting any of our claims in danger, we shall be entitled to accelerate the due date for payment irrespective of the term of any bills accepted on account of payment.
4. If Buyer gets into arrears, we shall be entitled to prohibit further processing of the goods supplied, to take back the goods, and if necessary to access Buyer's premises in order to take possession of the goods. Repossession of the goods shall not constitute cancellation of the contract.
5. In the event of any of the circumstances described in paragraphs 3 and 4 herein above we shall be entitled to revoke the authority to collect (IV.7) and to demand advance payment for outstanding supplies. Buyer can avert the legal consequences listed in paragraphs 3 to 5 hereof by providing a security in the amount of our endangered claim for payment.
6. If Buyer defaults on any payment, all other claims against Buyer shall be payable without further delay notwithstanding a different period allowed for payment.
7. The legal provisions concerning default in payment shall remain unaffected.

III. Security

We shall be entitled to the usual securities to safeguard our claims, including claims that may be conditional or limited in time.

IV. Retention of Title

1. All goods supplied by us shall remain our property (Reserved Goods) until all our claims have been met, including without limitation any balance of current accounts due to us under the contract with Buyer. The above shall also apply to future and conditional claims, e.g. claims resulting from acceptor's bills.
2. Every act of processing is carried out for us in our capacity as manufacturer of the goods pursuant to Section 950 of the BGB without binding upon us. Processed goods shall be deemed to be Reserved Goods within the meaning of paragraph 1 herein above.
3. In the event that the Reserved Goods are processed, commingled, or combined by Buyer with other goods, we shall be entitled to the resulting co-ownership share in the new object thus created based on the proportion of the invoice value of the Reserved Goods and the other goods used in such object. Buyer agrees that in the event that our ownership expires as a result of commingling, combining or processing, Buyer shall be deemed to have assigned to us hereby any ownership rights or expectant rights Buyer may have in the new stock based on the proportion of the invoice value of the Reserved Goods and the other goods used, and Buyer further agrees to hold such goods in custody for us free of charge. Our co-ownership rights shall be deemed to be Reserved Goods within the meaning of paragraph 1 herein above.
4. Buyer shall be entitled to resell the Reserved Goods in the ordinary course of business on Buyer's usual terms; provided, however, that Buyer is not in default and provided further that Buyer in its turn reserves right of ownership and that the claims from the resale are assigned to us in acc. with paragraphs 5 and 6 hereof. Buyer shall not have the right to dispose of the Reserved Goods in any other manner. Resale shall be deemed to include use of the Reserved Goods for the performance of contracts for work and contracts for the supply of goods and services.
5. Buyer hereby assigns to us Buyer's claims from the resale of the Reserved Goods. Such claims shall – to the same degree as the Reserved Goods – serve as security within the meaning of paragraph 1 herein above.
6. If Buyer resells the Reserved Goods together with other goods, we shall be entitled to the claims from the resale based on the proportion of the invoice value of the Reserved Goods and the other goods used. In the event of the resale of goods in which we have co-ownership rights in acc. with paragraph 3 herein above, a share in the claim in proportion with our co-ownership share shall be assigned to us.
7. Unless we revoke the authority to collect in accordance with Clause II.5 herein above, Buyer shall be entitled to collect any claims from the resale. Buyer agrees that Buyer will, at our request, immediately notify its customers of the claims assigned to us – unless we choose to do so

ourselves – and to submit to us all details and documents that may be necessary for collection of claims.

8. Even if Buyer has our permission to collect, Buyer shall on no account be entitled to assign the claims to third parties or to enter into any kind of factoring transactions.
9. Buyer shall notify us immediately of any attachment of property or any other injury by a third party.
10. If the value of the existing security exceeds the secured claims by more than 20% and if such excess is not of a temporary nature, we shall, at Buyer's request, insofar be obliged to release security amounts at our option.

V. Place of performance and jurisdiction

The location of the works or the warehouse from which we deliver our supplies shall be the place of performance for our delivery obligation; the location of the invoicing company shall be the place of performance for Buyer's payment obligation; the place of jurisdiction for both parties shall be Siegen. We shall also be entitled to take legal action against Buyer at Buyer's place of jurisdiction.

VI. Delivery times, delivery dates

1. Delivery dates and delivery periods specified by us shall be deemed to be approximate dates and periods only, unless a specific period or a specific date has been expressly promised or agreed.
2. The delivery dates confirmed shall be deemed met upon timely delivery ex works, i.e. upon delivery to the forwarding agent, carrier, or other third party commissioned with the shipment. Such dates agreed shall also be deemed met if the goods cannot be dispatched or installed in good time due to circumstances that are beyond our control. We assume no liability for timely shipment.
3. If not all of the conditions and details of the order have been agreed between us and the Purchaser or where the Purchaser has not yet provided any national or international official certificates or documents and drawings necessary for the delivery of the order, any delivery dates confirmed shall be extended until such date when the above conditions have been duly met. The same shall apply if the Purchaser fails to meet its contractual obligations or in the event of any subsequent amendments of the contract on the part of the Purchaser that have an impact on the delivery dates.
4. In the event of force majeure or any other unforeseeable, extraordinary events and circumstances not caused through the fault of either of the parties hereto – including without limitation problems with materials procurement, lack of supplies or faulty or unpunctual receipt of supplies on our part notwithstanding due hedging, breakdown of machinery or equipment, failure of telecommunications and IT systems, fire, strike, lockout, lack of transport, road blocks, acts of government, breakdown of machinery, import and export prohibitions, problems with energy supply, mobilisation, war, blockades, etc. – the delivery period shall be extended accordingly if we are hindered from timely fulfilment of our obligations. The above shall apply also if such circumstances are suffered by our own suppliers.
5. If delivery on our part becomes impossible or unreasonable due to the circumstances listed in Clause 3.4, we shall be entitled to cancel the contract. If the delay in delivery lasts longer than two months, the Purchaser shall be entitled to cancel the contract.
6. If the delivery date is postponed in accordance with the provisions in Clause 3.4 or if we are released from the delivery obligation in accordance with Clause 3.5 the Purchaser shall not be entitled to claim damages for default on our part. We shall be entitled to refer to the above-mentioned circumstances only if we notify the Purchaser immediately of the beginning and end of such hindrances.
7. If the unforeseen events listed in Clause 3.4 change the economic meaning or the scope of the performance under the contract or if such events have a material impact on our operations, the contract may be modified accordingly. The provisions of § 313 of the German Civil Code (BGB) shall not be affected by the above.
8. In the event of a delay in delivery, the Purchaser shall grant us a reasonable extension period. After expiry of such an extension period the Purchaser shall be entitled to cancel that part of the agreed performance that has not yet been delivered. If the Purchaser has a legitimate interest in declining a partial delivery, the Purchaser shall also be entitled to cancel the entire contract.
9. Any further claims on the part of the Purchaser for breach of duty shall be precluded, including without limitation claims for compensation insofar as the damage has not been caused intentionally or through gross negligence.

VII. Dimensions, weight, quality

Admissible deviations in dimensions, weight and quality shall be those provided in the DIN standards or general customary. The weight of goods shall be determined on our adjusted scales and shall form the binding basis for invoicing. The weighing protocol submitted shall serve as statement of weight. Unless units are weighed individually, invoices shall be based on the total weight of a consignment. Differences in the calculated weight of units shall be apportioned to units on a pro rata basis.

VIII. Shipment, packaging, and passage of risk

1. If loading or transportation of goods is delayed for reasons for which Buyer is responsible, we shall be entitled, at Buyer's cost and risk, to store the goods in our reasonable discretion, to take all measures we deem appropriate for conservation of the goods, and to invoice the goods as if delivered. The same shall apply if goods notified as ready for dispatch are not called off within four days. The legal provisions concerning default in acceptance shall continue to apply.
2. We will deliver the goods packed and protected against rust to the extent customary in commercial practice at Buyer's costs; no packaging and other materials used for protection and transport are taken back.
3. In the event of damage in transit Buyer shall arrange for immediate ascertainment of the facts by the competent parties.
4. The risk shall pass to Buyer upon delivery of the goods to the carrier or freight forwarder, however not later than when the goods leave the works or the warehouse.

IX. Liability for defects

1. Immediately after receipt of the goods Buyer shall inspect the goods for defects, deviations from the agreed quantity, or delivery of merchandise other than that stipulated. If Buyer discovers any defects in the supplies or parts thereof, Buyer shall notify us of such defects immediately in writing. The time limit for lodging a complaint shall be 14 days after receipt of the goods for defects recognisable upon proper inspection of the goods. Other defects shall be notified immediately upon detection.
2. In the event of defects for which we are responsible we shall be entitled, at our option, to remove the defect or provide a replacement.
3. If we fail in the removal of any defect, Buyer shall be entitled, at Buyer's option, to cancel the contract or to claim abatement (reduction of the purchase price). Minor defects shall not result in a right of cancellation. If Buyer exercises its right of cancellation of the contract after our failure to remove the defect, Buyer shall no longer be entitled to any damage claims for the defect.
4. Defects liability shall be excluded for defects caused by unsuitable or improper use, incorrect assembly and/or initial operation by Buyer or third parties acting in Buyer's name, natural wear and tear, or incorrect or negligent handling.
5. The period of limitation for claims arising from defects shall be twelve months from passage of risk.
6. If the goods supplied lack any of the guaranteed properties, we shall be liable for damages in accordance with the legal provisions. This shall not apply if a guarantee only covers compliance of the relevant supplies but not the risk of consequential harm caused by a defect. The provisions in Article X shall not be affected hereby.
7. Buyer shall be entitled to cancel the contract for any breach of obligations for which we are responsible.

X. General limitation of liability

1. Damage claims for slightly negligent breach of immaterial duties on the part of ourselves or our agents shall be excluded. In the event of slightly negligent breach of contract our liability shall be restricted to contractually relevant, foreseeable damage or loss.
2. This shall not affect claims under the Product Liability Act as well as claims for injury to life, limb or health.

XI. Proof of exportation

If a Buyer residing outside the Federal Republic of Germany (extra-territorial customer) or its agent collects and transports or ships goods abroad, Buyer shall provide us with the proof of exportation necessary for tax purposes. If such proof is not provided, Buyer shall be responsible for payment of the turnover tax on the invoice amount due for deliveries within the Federal Republic of Germany.

XII. Applicable law

The laws of the Federal Republic of Germany shall apply with the exclusion of the UN Convention of contracts for the International Sale of Goods (CISG).

XIII. Severability

If a provision of the contract made with Buyer, including a provision in these General Terms and Conditions of Sale, shall be or become invalid wholly or in parts, then this shall not affect the validity of the other provisions. The wholly or partly invalid provision shall be replaced by a provision which comes as close as possible to the original economic intention of the invalid provision.

XIII. The General Terms and Conditions of Sale are written in German and English. The English version is just a translation of the German version. In the event of discrepancies or lack of clarity the German version alone shall prevail.

Blefa GmbH & Co. KG