

General terms and conditions and delivery conditions- September 2019

§ 1 Area of applicability

(1) All enquiries, assignments and orders shall be exclusively subject to our below terms and conditions and delivery conditions (hereinafter referred to as “conditions”). Our conditions shall be an integral part of all agreements entered into with our contractual partners (hereinafter referred to as “ordering party”) in relation to our deliveries and/or services, even if they are not agreed separately.

(2) Unless agreed otherwise, our conditions shall apply as per the version applicable at the time of the ordering party submitting an order, or at least in the last written version notified as a framework agreement for similar future contracts, without this requiring a separate notification in individual cases.

(3) Our conditions shall only apply to ordering parties, who are acting in a commercial or self-employed capacity upon finalisation of the respective agreement (entrepreneurs), or in terms of judicial persons in regards to public law or public law special assets.

(4) Any individual agreements put in place with ordering parties in individual cases (including additional agreements, amendments and changes) shall take priority over these conditions. Regarding the existence and content of such agreements, a written agreement or written confirmation on our part shall serve as a basis, subject to evidence to the contrary.

(5) Legally relevant declarations and notifications, which are to be issued to us by the ordering party, following the conclusion of the agreement (such as deadlines, notifications in regards to defects, withdrawal or discount declarations) shall require the written form in order to take effect.

(6) Notes in regards to the applicability of legal regulations only serve the purpose of clarification. Even without such a clarification, the legal regulations shall apply, unless explicitly amended or excluded as per these general terms and conditions.

§ 2 Conclusion of agreement

(1) Our offers shall be subject to change without notice and non-binding, unless agreed otherwise. This also applies, if we have forwarded documents, product descriptions and other written and electronic documents to the ordering party in advance.

(2) The ordering of goods or services by the ordering party shall be regarded as a binding offer. We may either accept the offer by means of sending an order confirmation (in written or text form), or by delivering the goods within two weeks of receipt of the offer.

(3) Additions, amendments or additional agreements in regards to these conditions, or any instructions or orders submitted to us as well as all agreements, which are put in place between the ordering party and us for the purpose of execution the respective agreement, shall require our written confirmation in order to come into effect. This also applies to the waiver of the requirement of the written form. A confirmation issued by us in text form shall be sufficient.

(4) We retain all ownership rights and copyright in images, drawings, calculations and other documents; they may not be forwarded to third parties without our prior written consent. This applies, in particular, in terms of written documents, which we have marked as “confidential.” Any drawings and other documents relating to offers shall be returned upon request, should the assignment not be granted to the offering party.

(5) In case of a breach against figure (3), the ordering party shall be obligated to pay an appropriate contractual fine in the amount of up to 5% of the net order value, which shall be stipulated at our own discretion and, which shall, if necessary, be subject to an assessment of suitability and appropriateness by the courts.

§ 3 Prices, payment conditions

(1) Unless stipulated otherwise as per our order confirmation, our prices shall be “ex works”, and excluding packaging; this shall be invoiced separately.

(2) Our prices are in EUROS plus value added tax, which we shall indicate separately in our invoice as per the legal amount valid on the day of issuing the invoice. In case of export deliveries, the ordering party shall pay all additional customs fees, as well as any other additional fees and public excise tax.

(3) Unless stipulated otherwise as per our order confirmation, the purchase price shall be net (without deductions) and shall be payable within 30 days of the invoice date. We shall be entitled to ask for an immediate payment of our invoices, should we become aware that the ordering party’s financial situation has deteriorated significantly since finalising the agreement. Should the ordering party default regarding the payment, we shall be entitled to ask for default interest amounting to 8% p.a. above the respective basic interest rate. The evidencing of additional damages shall not be excluded as a result. The ordering party shall be entitled to evidence lesser damages.

(4) We reserve the right to amend prices up to an appropriate level, should cost reductions or cost increases occur after conclusion of the contract, especially due to tariff agreements or changes to the price of materials. This shall be evidenced to the ordering party upon request.

(5) Irrespective of the ordering party’s service definitions, which may vary, the parties herewith agree that §§366 par. 2, 367 of the German Civil Code (BGB) shall apply in regards to the offsetting of payments.

(6) Our demands may only be offset by means of undisputed and legally established demands. The same applies accordingly in terms of the exercising of service refusal and retention rights, as far as these are not based on the same contractual relationship.

(7) The transfer of claims against us shall be excluded, unless prior consent is obtained from us.

(8) Should it become evident after conclusion of the agreement that our claims in terms of the purchase price are at risk due to the ordering party’s inability to provide payment, we shall be entitled to refuse service and – following the setting of a deadline – to withdraw from the agreement (§321 BGB) as per the legal regulations. The ordering party may prevent such a withdrawal by means of providing a guarantee. In regards to contracts concerning the production of non-representative items (custom productions), we may declare withdrawal immediately; the legal regulations in terms of the waiver of deadlines shall not be affected.

(9) Should the requested repair of a repair order be technically or economically impossible or if the ordering party cancels the repair due to the cost estimate, the ordering party has to compensate the costs for the ascertainment of damage or for the preparation of the cost estimate. This payment obligation shall also apply insofar as the ordering party instructs us to dispose any objects left for repair or to return them unrepaired.

§ 4 Shipping

(1) Upon handing over the delivery items (commencement of loading), all risks shall be transferred to the forwarding agency, freight handler or third party tasked with the respective shipment in any case. This also applies to partial deliveries. Should the shipment be delayed for any reasons the ordering party is responsible for, the transfer of risks shall occur upon notification of readiness to ship. Any storage costs incurred after the transfer of risks shall be met by the ordering party.

(2) Upon explicit request of the ordering party, shipments shall be insured against theft, transport, fire and water damage and any other insurable risks at their expense. In all other cases, shipments shall be carried out uninsured and at the risk of the ordering party.

§ 5 Delivery time

(1) Any delivery deadlines and dates stipulated by us shall be non-binding, unless we have agreed to an according and binding adherence in writing. In case of a shipment purchase, adherence to the delivery deadlines and dates shall be based on the date of the respective transfer of risks. The commencement of a delivery deadline, to which we have agreed in writing, shall depend on a prior clarification of all organisational and technical questions, as well as the timely and orderly fulfilment of all of the ordering party's obligations, such as receipt of payment.

(2) Should the ordering party fail to accept the delivery, should they fail to contribute as agreed, or should the delivery be delayed for other reasons the ordering party is responsible for, we shall be entitled to claim the reimbursement of any damages incurred, including possible additional expenses. In this case, the risk of accidental loss or accidental deterioration of the items shall be transferred to the ordering party, as soon as they are in default concerning the respective acceptance. The possibility of further claims is herewith reserved.

(3) Correct and timely self-delivery shall be reserved. In case of force majeure or similar events, which render our delivery or service impossible, or which make a delivery extremely difficult on a non-temporary basis, such as operational interruptions of any kind within the production site, difficulties in terms of the acquisition of materials and energy, transport delays, strikes, legal lock-outs, we shall be entitled to withdraw from the agreement; in case of temporary difficulties, the delivery deadlines/dates shall be extended/moved accordingly, whilst including an appropriate lead time. The ordering party may withdraw from the agreement, should the acceptance of the delivery or service be unreasonable in terms of the delay.

(4) We shall be entitled to carry out partial deliveries, as far as this is reasonable for the ordering party, taking their interests into account.

(5) Any changes to the delivery items, which are technically necessary or useful, shall be reserved during the delivery timeframe, as long as this is reasonable for the ordering party, whilst taking their interests into account.

§ 6 Delivery or service defects

(1) Regarding the rights of the ordering party in case of material or legal defects (including wrong and defective deliveries, as well as incorrect set-ups or defective set-up instructions), the legal regulations shall apply, unless stipulated otherwise. In any case, the special legal regulation on end deliveries of goods to consumers (delivery stipulation as per §§ 478, 479 BGB) shall not be affected.

(2) The basis for our liability in case of defects shall be the agreement put in place in terms of the characteristics of the goods. Agreements regarding the characteristics of goods would be the respective product descriptions (including those issued by the manufacturer), which were forwarded to the ordering party before their order, or which were included in this agreement in the same way as the general terms and conditions.

(3) Should the respective characteristics not have been agreed, it is to be evaluated whether a defect exists, namely in accordance with the law (§ 434 par. 1 p.2 and 3 BGB). We shall not accept any liability in terms of public statements made by the manufacturer or other third parties (such as advertisement statements).

(4) The guarantee shall not apply if the defect can be traced back to a breach of the operation, maintenance and installation guidelines, an unsuitable or incorrect utilization, erroneous or negligent treatment and natural wear and tear, as well as any actions carried out on the delivery item by the ordering party or a third party.

(5) The ordering parties claims in regards to defects shall depend on whether they have met their legal checking and notification obligations (§§377, 381 of the commercial code (HGB)). Should such checks lead to the detection of a defect, or should this be noticed at a later point, this should be notified to us in writing immediately. An immediate notification would be a notification made within two weeks, whereby the sending date of the notification shall be decisive in terms of adherence to the respective deadline. Irrespective of these checking and notification obligations, the ordering party has to notify obvious defects (including wrong and insufficient deliveries) in writing, whereby a timely sending of the notification shall be sufficient in terms of the deadline. Should the ordering party fail to carry out orderly checks and/or defect notifications, our liability shall not apply to defects, which were notified in an untimely manner.

(6) Should the delivered goods be defective, the ordering party may ask the supplier to provide a remedy at their discretion, either the removal of the defect (subsequent improvement) or the delivery of non-defective item (replacement delivery).

(7) We shall be entitled to make an according remedy dependent on the ordering party paying the purchase price. The ordering party is, however, entitled to retain an appropriate share in the purchase price in relation to the defect.

(8) The ordering party is to grant the necessary time and opportunity to us in terms of the remedy actions owed, and in particular they have to hand over the respective goods for examination purposes. In case of a replacement delivery, the ordering party has to return the defective goods to us as per the applicable legal regulations

(9) Any expenses incurred in terms of the examination and respective remedy actions, and in particular transport, travel, work and material costs (not: de-installation and installation costs), shall be met by us, if the defect is actually established. Otherwise we may ask the ordering party to reimburse any costs incurred in terms of an unjustified defect remedy request (and in particular examination and transport costs), unless the ordering party would have been unable to establish that no defect existed.

(10) In urgent cases, for example in case of a risk to operational security, or in order to prevent unreasonable damage, the ordering party shall be permitted to remedy defects themselves, as well as to request that any expenses incurred are reimbursed. In case of such own repair actions, we are to be notified immediately and, where possible, prior to the event. The right to carry out own repairs shall not exist, if we would have been entitled to refuse the execution of according remedy actions as per the legal regulations.

(11) Should the respective remedy actions be unsuccessful, or should the deadline set by the ordering party in regards to such remedy actions have passed unsuccessfully, or should these not be necessary as per the legal regulations, the ordering party may withdraw from the purchase agreement, or may reduce the purchase price. In case of minor damage, there shall be no withdrawal rights.

(12) Even in case of a defect, any rights of the ordering party to compensation or the reimbursement of expenses may only be granted as per the mandatory legal regulations, and as per these conditions. In any other case, these rights shall be excluded.

(13) In terms of drawings or images, measurements or other service data, or the delivery of samples or tests published or handed over by us/our assistants, we shall only be liable in terms of the product's characteristics and shelf-life, if it has been said to on an explicit basis (§ 443 BGB).

§ 7 Liability

(1) Regarding all court claims against us, irrespective of the legal reason, and in particular in regards to impossibilities, delays, defective deliveries, illegal actions, and as far as we are responsible, we shall only be liable as follows:

a) In case of intent or gross negligence, we shall be fully liable.

b) In case of a breach of significant contractual obligations (cardinal obligations – obligations, the fulfilment of which render the correct execution of the agreement possible in the first place, and an adherence to which, the contractual partner relies and should be able to trust on a regular basis) following simple negligence, even in case of illegal actions, our liability shall be limited to foreseeable risks as per the agreement, except for liability for damages as a result of an injury to life, body or health.

c) In case of a breach of insignificant contractual obligations following simple negligence, even in case of illegal actions, our liability shall be excluded; this does not apply in regards to liability for damages as a result of an injury to life, body or health.

(2) The above-stated liability restrictions or liability exclusions also do not apply to compensation claims due to assumed guarantees, as well as claims in regards to the product liability law. The right of the ordering party to withdraw from the contract in case of an obligational breach, for which we are responsible, shall not be affected.

(3) As far as our liability as per the above paragraph (1) is excluded or limited, this also applies to the personal liability of our employees, staff, co-workers, representatives and assistants.

§ 8 Reservation of proprietary rights

(1) The delivered goods (reserved goods) shall remain our property up until the full payment of all current and future demands in connection with the delivery agreement and an on-going business relationship (secured claims).

(2) The goods subject to the reservation of proprietary rights may not be pledged to third parties before full payment has been made in terms of the secured demands, nor may these be transferred for security deposit purposes. In case of liens, confiscations or other orders or actions by third parties in regards to the goods delivered by us, the ordering party has to be notified in writing as soon as possible. The ordering party shall be liable to us in terms of any losses incurred, should the third party be unable to reimburse the court and non-court costs of the respective complaint as per § 771 of the civil process order.

(3) If reserved ownership goods are processed or transformed by the Buyer, we are always deemed to be the manufacturer from a right in rem point of view within the meaning of Section 950 of the German Civil Code (BGB) without however assuming any liability for such. Should the reserved goods be combined with other third party objects, or should they be transformed, we shall acquire co-ownership in the new items in relation to the value of the reserved goods to the other processed items at the time of processing. Regarding the produced item, the same shall apply as in regards to the reserved goods.

The ordering party shall be entitled to sell the reserved goods as part of their orderly business transactions; they shall, however, transfer all claims in the amount of the final facture amount (including value added tax) of our claim, to which they may be entitled due to an on-sale to their clients or third parties, which is independent of whether the reserved goods were sold on with or without processing. The ordering party shall retain the right to confiscate these claims, even after an according transfer. Our right to confiscate claims ourselves shall not be affected by this. We shall be obligated not to confiscate any demands, as long as the ordering party meets their payment obligations towards us, and there are no defects in terms of performance, and as long as we do not claim our proprietary rights as per the exercising of our rights as per the below par (5). Should we decide our confiscation rights, we may demand that the ordering party discloses the transferred demands to us as well as their debtors, and that they provide all information required in regards to the confiscation, that they hand over any associated documents and that the transfer is notified to the debtors (third parties). Furthermore, we shall be entitled to revoke the ordering party's authorisation to further sell and process the goods subject to these proprietary rights.

(5) In case of a payment default of the ordering party, we shall be entitled to withdraw from the contract, as well as to take back the reserved goods, to disclose the security transfer, and to process the reserved goods and transferred demands in order to satisfy any overdue claims against the ordering party. In this case, the ordering party shall grant us or our representative immediate access to the reserved goods, and shall release them. Furthermore, they shall disclose the transferred demands and their debtors to us, and that they provide all information required in terms of the confiscation, that they hand over any associated documents and that the transfer is notified to the debtors.

(6) The ordering party shall only be entitled to sell the reserved goods abroad, if they ensure that we a guaranteed equal security rights in the reserved goods, both from a legal and economic point of view.

(7) The ordering party shall be obligated to treat the delivered goods with care. In particular, they shall be obligated to insure these sufficiently at replacement value against fire, water and theft at their own expense.

(8) Should the realisable value of the securities exceed our demands by more than 10%, we shall release securities at our discretion and following the ordering party's request.

§ 9 Limitation period

(1) Irrespective of § 438 par. 1 no. 3 BGB, the general limitation period in regards to claims concerning material and legal defects shall amount to one year as of the delivery date. If an acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) If the goods include construction material or items, which were utilised in a construction project as per their usual purpose, and should this have caused a defect (construction material), the limitation period shall amount to five years as of the delivery in line with the legal regulations (§ 438 par. 1 no. 2 BGB). The additional legal regulations in regards to limitation periods (in particular § 438 par. 1 no. 1 par. 3, §§ 444, 479 BGB) shall not be affected.

(3) The above limitation periods in regards to purchase rights shall also apply to the contractual and non-contractual compensation rights of the ordering party concerning defects in the respective goods, unless the application of the regular legal limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Compensation claims of the ordering party as per § 7 par. 1 (1), both in regards to guarantees and as per the product liability law, shall only expire as per the legal limitation periods.

(4) In case of completed partial services, the limitation period shall commence upon receipt or acceptance of the respective part.

§ 10 Credit assessment

(1) When contracts are concluded and in specific cases where there is a legitimate interest, our company also checks the creditworthiness of existing clients on a regular basis. For this purpose, we collaborate with Creditreform Boniversum GmbH (Hellersbergstraße 11, 41460 Neuss), Verband der Vereine Creditreform e.V. (Federation of Creditreform Associations) (Hellersbergstraße 12, 41460 Neuss) and CRIF Bürgel GmbH (Radlkoferstraße 2, 81373 Munich) from which we receive the relevant data. To this end, we provide your name and contact details to the above-mentioned credit agencies. Any information in accordance with Article 14 of the EU General Data Protection Regulation on data processing at Creditreform can be either found at www.boniversum.de/EU-DSGVO or at www.creditreform.de/EU-DSGVO or at www.crifbuergel.de/de/datenschutz.

§ 11 Final clauses

(1) As far as the ordering party is an entrepreneur, the place of jurisdiction in terms of all claims based on or in connection with the business relationship (including currency, cheque and certificate processes) shall be the registered office or our company, i.e. the locally and factually responsible court. We shall, however, be entitled to sue the ordering party at the court responsible for their registered office. Exclusive legal responsibilities shall not be affected by the above regulation.

(2) Unless stipulated otherwise as per the order, the place of execution shall be our company's registered office.

(3) Regarding all legal relationships, into which the parties have entered based on or in connection with this agreement, the laws of the Federal Republic of Germany shall apply exclusively. The UN agreement on contracts regarding international purchases dated 11th April 1980 shall not apply.

(4) Should a stipulation of these general terms and conditions and delivery conditions be or become legally invalid or non-executable, for whatever reason, or should the general terms and conditions and delivery conditions have gaps, the validity of the remaining stipulations shall not be affected. Instead of invalid or non-executable stipulations, or in order to fill gaps, suitable regulations shall apply, which shall, in a legally valid context, be as close to what the parties had intended or would have intended, had they considered the respective matter. Should the invalidity of a stipulation be based on a measurement of the performance or time (deadline or date), a legally valid measurement of the performance or time shall be used instead of what was agreed, which shall be as close to what was initially intended as possible.