General sale, delivery and serviced provision conditions of Büttel und Marx GmbH

General terms and conditions in PDF form, available for download

Art. 1 Scope, exclusion of other business conditions
(1) All our offers, deliveries and services are based on these conditions (hereinafter called "General Business Conditions"). The conditions below apply only to traders in the meaning of art. 14 BGB (German Civil code), to public legal entity or public special patrimony (hereinafter called "client").
(2) Our General Business Conditions are exclusively applied. The application of other general business conditions is excluded in principle, except the case in which we expressly agreed in writing with this application.
(3) Our General Business Conditions are also applied if we perform the delivery without reserves to the client, being aware of the client conditions, which are opposable to or violate our general business conditions.
(4) Our General Business Conditions are applied in permanent business relations and without a new express mention for future offers, services for the client.

Art. 2 Contract conclusion, volume to be delivered, assignment interdiction
(1) Our offers are generally made free of charge and without commitment, except otherwise agreed in writing. The contracts and conventions become binding from legal point of view through our written confirmation of the order or through our delivery. The same is valid for the completions, amendments or verbal conventions besides the written contract.
(2) If not otherwise expressly agreed, the contract conclusion is made subject to correct and due time self-delivery by our providers. This is valid only if the non-delivery is not our fault, especially when completing congruent hedging operation with our provider. The client is immediately informed about the service unavailability. The possible counter-performances already carried out are reimbursed.
(3) For the volume to be delivered and services, as well as for the question if and in what volume design services are needed, our written confirmation of the order or our offer, if it exists, is decisive.
(4) All data on our products, especially figures included in our offers and flyers, the data on the size and services, as well as other technical data are average values to be relatively taken into account. The tolerances remain expressly reserved concerning the shape, colour, quantities, weights, number of pieces and sizes.
(5) The documents and documentation on which our offer is based, such as technical drawings, illustrations, descriptions, weights and sizes, are the object of our contractual convention only if this is expressly agreed in writing. We reserve the right to make such modifications and adaptations, which do not affect essentially the scope of the contract and delivery.
(6) All documents on the offer, models, plans, drawings, cost estimates, documents and documentations – in electronic format also – are our property and cannot be kept by the client, copied or multiplied in other way or made public to third parties and must be handed over and deleted immediately on our request and choice. All protection rights on these documents are our property and exist also when we assign the documents to the client.
(7) We reserve the right to modify the construction and shape during delivery, to the extent in which the object of purchase and its aspect are not fundamentally modified and the delivery purpose according to the contract is not affected unreasonably for the client.
(8) The assignment of client receivables to us is only allowed with our express, written consent. The same is valid for the legal rights of the client associated with the contractual relation.

Art. 3 Prices, payment, partial payment
(1) If not otherwise agreed, our prices are applied for "ex works" deliveries, Incoterms 2010, and they are net prices, the taxes applicable for sales not being included, even if these are not expressly outlined, and without including the costs for packaging, transport, installation, shipment, insurance expenses, customs clearance, any bank and transaction costs for payments and other incurred costs.
(2) Depending on the progress of the order, we can request partial payments for the already partially provided services.
(3) Our invoices are immediately due to be paid, without discount.
(4) The client can delay the payment for 30 days after receiving the invoice, at the latest, if other circumstances that justify the delay have not been agreed (for example, a shorter agreed remittance advice or payment term or a certain payment term determined according to the calendar). Since the notice of default, the client owes delay interests in the amount of 9 percentage points over the basic interest rate. We additionally reserve the right to calculate a delay lump sum of 40.00 Euro in case of payment delay. Other contractual or legal rights remain unchanged.
(5) In case of payment delay, we are entitled to condition other deliveries on the full payment of delayed receivables.
(6) If not otherwise agreed in writing, we are entitled to adjust the freight prices and/or tariffs, to the extent in which our costs for salaries and remunerations, raw materials or consumables, energy costs, transport costs and customs taxes or other materials increase more than reasonably. This right is valid also for the deliveries and services due to continuous obligation. The client has the obligation to compensate us for all the damages caused by the contract non-fulfilment.
(7) If the payment conditions are not complied with or if facts that lead to doubting the client solvency are not known by us or obvious and if they existed already at the moment of contract conclusion, but they were not known by us, we are entitled, subject to any other legal right, to establish a deadline for the execution of ongoing orders or deliveries and to request an advance payment or insurance at our choice for due deliveries and after the successful expiration of this additional reasonable term for such warranties, to terminate the contract subject to any other legal right.
(8) Through the payment delay of our client, payment interruption or request for opening the insolvency procedure concerning the client patrimony, all our receivables become immediately due. This is also applicable if the payment objectives are agreed or if the receivables are not yet due for other reasons. Moreover, this is valid regardless of the duration of changes accepted by us.
(9) The compensation with the client receivables is only allowed if the receivables are found to be certain or final.
(10) The cheques and/or exchanges are accepted by us as methods of payment only if we agreed in writing priorly such method of payment. All costs incurred by us from such payment shall be borne by the client.
(11) All payments to us shall be made exclusively in EURO. The possible risks at the exchange rate belong to the client.

Art. 4 Delivery terms
(1) The delivery term results from the conventions of contractual parties.
(2) The agreed delivery term is a provided delivery term, except otherwise agreed in writing.
(3) The agreed delivery term starts at the earliest along with the contract conclusion and implies the clarification of all commercial and technical matters. The beginning of the delivery term provides all necessary documents or authorizations made available and the payment of possible agreed advance payments by the client.
(4) The compliance with the delivery term is subject to the correct and due time self-delivery.
(5) The delivery is made "Ex Works", Incoterms 2010. The client has the obligation to collect the goods immediately after the communication of the shipment availability.
(6) The delivery term in case of "Ex Works" delivery, Incoterms 2010, is complied with if the purchased object is withdrawn or ready to be shipped within the agreed term and this was communicated to the client. In case of a purchase with shipment, the delivery term is complied with if the purchased object was delivered to the shipment company at the agreed term or was ready to be delivered and could not be delivered, but not from our fault.
(7) The delivery term is extended in the adequate volume if the occurrence of unforeseen and extraordinary events concerns us or our providers. The unforeseen events are especially the riot, strike, blockage, fire, confiscation, boycott, legal or official provisions and restrictions or inadequate or delayed delivery by our providers, if we are not responsible for these events and refer to our performance obligations. If the delivery term is extended due to such circumstances with an adequate term, after the expiration of this extended delivery term, the client is entitled to withdraw from the contract. If the client is interested in partial deliveries, the client can terminate parts of the contract. If we already provided partial deliveries and/or services, the client can withdraw from the entire contract only if it is not demonstrably interested in our partial delivery and/or services. This does not prejudices legal or contractual rights to withdraw from the contract.
(8) The deliveries before the expiration of the delivery term and partial deliveries are approved if they are acceptable by the client.
(9) If the client delays the acceptance or is responsible for the shipment delay, we can store the products on the risk and expense of the client and calculate them as delivered ex works. After the failed determination and expiration of a subsequent term for the acceptance of products, we can terminate the contract and claim damages for the service. Other rights remain unchanged. Fixing a subsequent term is not necessary if the client seriously and finally refuses the acceptance or if it is obvious that during the period of the subsequent term it cannot pay the purchase price, namely cannot carry out the delivery acceptance. An amount of 20% of the order value is valid as compensation. The damage is compensated with the paid advance payment. The parties shall prove whether the damage is higher or lower.

Art. 5 Risk transfer, shipment, packaging
(1) If not agreed otherwise in writing, the acceptance of the delivery objects by the client is made from our factory.
(2) The risk of accidental loss and damage of delivery objects is transferred on the buyer along with the communication of the shipment availability and the selection of the purchase object. This is valid also if we took over additional services such as loading, transport and unloading. If the shipment of objects is delayed due to the client fault, the risk of accidental loss is transferred to the client along with the notification of delivery availability.
(3) If a purchase with shipment was agreed, the risk of accidental damage or loss is transferred to the buyer along with the shipment if the delivery object at the latest, namely with the delivery to the person who carried out the transport from the factory to the shipment place. If the shipment is delayed by the client behaviour, the risk is transferred to the buyer along with the communication of the shipment availability. **Art. 5** par. (2) thesis 3 applies mutatis mutandis.
(4) If we carry out the transport for the client, we are responsible for the type and mode of packaging and shipping the objects, if not otherwise agreed in writing.
(5) The client is responsible for concluding the transport insurance.

Art. 6 Title retention
(1) We retain the ownership title on all objects provided by us until the full payment of all our receivables from the business relation with the client. In case of payments from cheques and exchanges, we retain the ownership title on the objects delivered by us until the withdrawal risk no longer exists.
(2) The client undertakes to mark in any moment, upon our request, as well as in case of an insolvency request, to mark at the exterior, visibly, the contractual object under our property with "under the property of the company Büttel & Marx GmbH".
(3) The client has the obligation to carefully treat the goods under reserve; it has the obligation especially to sufficiently insure it against damages caused by fire, flood and theft at the new value, on its own expense. If maintenance and inspection works are necessary, the client shall carry them out on its own expense, in due time.
(4) If the client carries out the processing of reserved goods, this is made for us as producer in the sense of art. 950 BGB (German Civil Code). If the goods delivered by us is processed or mixed inseparably with other objects, we thus acquire the co-ownership on the new objects in relation to the invoiced value of the goods at the invoiced value of the other used goods. The client can further process the delivery objects within the normal functioning of the business if the security interests mentioned previously are complied with continuously.
(5) The client can resell the delivery objects within the normal functioning of the business as long as our title retention on the objects is complied with according to art. (6). The client is not authorized to carry out the warranty transfer, to pledge and similar measures.
(6) In case of reselling the delivery objects, the client already assigns all receivables resulting from resale to third parties. We accept this assignment through this document. If we are only co-owners of sold goods, the assignment is only carried out up to the amount of our receivables towards the client.
(7) We irrevocably empower the client to collect on its behalf the receivables that we were assigned. The revocation of the power given is possible only if the client does not properly fulfil its obligations under this contract, especially with respect to payment obligations, if it becomes insolvent or if it is unable to pay, if it submits an application for starting bankruptcy procedure or if such a request has been rejected because the state of affairs is missing. In case the power of attorney meant to facilitate the collection of our receivables is revoked, the client must inform the debtor with respect to the fact that the receivables were assigned to us. It

is also our choice not to hide the extended property right from third parties.
(8) The client´s right to dispose of the reserved goods, to process or to collect the receivables assigned becomes void even without any express revocation in case the bankruptcy procedure is approved or rejected because the state of affairs is missing, the payments are suspended, an application for starting the bankruptcy procedure is being submitted by the client or by third parties or in case of flaw or even over-indebtedness. In these cases, as well as in the cases under article 6, paragraph (7), we have the right to withdraw from the contract after the lapse of a reasonable period, with the result that we are allowed to take control over our reserved goods. The client has to return the reserved goods. The product resulting from the any exploitation of the reserved goods – after deduction of the costs of sales – will be divided from the debts that the client owes us.
(9) In case the power of attorney concerning the collection of assigned receivables, the client has the obligation to inform us in writing the name of the third party and the amount of receivables resulting from the assigned right.
(10) If the recently assigned guarantees exceed with more than 20% the receivables that need to be insured, we have the obligation, at the client´s request, to issue the guarantees as we please, but considering a reasonable amount.
(11) The client must inform us in writing in case any third parties are being given access to the reserved goods, to the assigned receivables or to other documents and documentations. All the costs resulting from the legal defence of our reserved goods and towards third parties shall be borne by the client.

Art. 7 Guarantee
(1) We are responsible for any material and legal flaws of the object under delivery at the moment of the risk transfer, respectively in case of a final reception either convened or in process at the moment of the final reception, according to the dispositions below. Complementary, the legal provisions shall apply.
(2) If the provision of design services is possible due to the client´s requirements and if they are at least partially based on the latter, after the client receives the drawings, the documentation and the design services, it must check if they can be applied, to check the dimensions required for installation and the compliance with the client´s requirements, while after reception it must inform us immediately with respect to any flaws.
(3) Only direct buyers have guarantee rights towards us and they cannot be assigned without our approval.
(4) Certain properties are considered to be guarantees only if we expressly confirmed it in writing. A guarantee is considered to be assumed only if we mark a property as "guaranteed" in writing.
(5) Within the scope of art. 377, art. 378 HGB (German Commercial Code), recognizable flaws, missing quantities or erroneous deliveries shall be immediately communicated in writing, within 14 days from the delivery date, but before any connection, blending, processing or installation actions, meant to classify the object of delivery as being authorized, except for the case in which either us, our legal representatives or the people involved in the fulfilment of our contractual obligations are considered to be responsible of violation. Hidden flaws must be communicated in writing within 14 days from the date of their detection. **Art. 377**, art. 378 HGB (German Commercial Code) apply as well.
(6) The buyer must allow us to notice together the object of the complaint and to be present when samples are taken in order to conduct further tests.
(7) The limitation period concerning the client´s rights resulting from flaws is stipulated in the provisions of art. (7) extends to one year, calculated from the commencement of the limitation period. In case of a building or in case of a good which was used according to its directions for use and led to failure, the legal limitation period shall apply according to art. 438 paragraph 1 no. 2 and art. 634a paragraph 1 no. 2 BGB (German Civil Code). If we wilfully decided to hide a flaw, statutory terms shall apply in case of potential claims for compensation. Statutory terms apply as well for the limitation of the potential claims for compensation that the client has because of flaws, in case we are accused of violation or gross negligence or in case the claims for compensation is based on injuries to life, physical integrity or health.
(8) The guarantee for material and legal flaws is influenced by the previous goods. With respect to our previous obligation we have the right, as we please, to either further improvement or to the delivery of a substitute. If we do not meet this requirement within a reasonable period or if in spite of repeated attempts any further improvement fails to materialize, the client has the right to decrease the purchase price or to withdraw from the contract. The termination of the contract is allowed only if it is proven that the client failed to manifest any interest in connection to partial deliveries, while our partial deliveries were flawless. The claims, especially those related to reimbursement of the costs and to compensations exist only in the limit of the regulations stipulated in art. 8 from below. The spare parts that were replaced become or remain in our property, while the ones requested should be returned on our expense.
(9) The client must send us the damaged goods on its own risk in order for it to be repaired or replaced, except for the case in which the return is not possible because of the type of delivery. We bear the transport costs corresponding to the repairing, only from the place where the purchased goods were delivered according to contractual clauses and at the amount of the maximum purchase price.
(10) The client must give us the necessary time and the chance to complete the repairing, respectively the replacement process. Only in urgent cases that might endanger the safety of exploration in order to avoid disproportionate serious damages or in case of delays resulting from our attempt to remedy the flaws in question, the client has the right to remove the flaws by itself, by turning to third parties or by requesting the reimbursement of the necessary costs.
(11) According to art. 478, art. 479 BGB (German Civil Code), the rights of appeal exist only if the use was justified by the consumer and only within the legal volume, without including any agreement that we reached, and that provide the compliance with the personal obligations of the people who have the right for appeal, especially the compliance of potential complaint obligations.
(12) Further processing or the installation of the goods that we deliver is always considered as being a disclaimer in relation to claims involving flaws, in case the flaw was obvious.
(13) In case of legitimate claims, the payments made by the client shall be reimbursed only after analyzing the material flaws. If the claim is not grounded, we have the right to request the client to compensate us for the costs in question.
(14) If the use of the object of delivery leads to the infringement of commercial protection rights or that of copyrights at the place of exposure of the object of delivery agreed by contract we shall either provide further usage right for the client or we shall change the object of delivery in order to make it tolerable for the client, so that to prevent the infringement of the protection right, all of this on our own expense. If this is not possible from economic point of view or within a reasonable period, the client has the right to withdraw from the contract by complying with all legal provisions. Under the conditions mentioned above, we shall also have the right of withdrawal.
(15) The rights with respect to the remediation of flaws do not exist in case of an insignificant error regarding the availability or usability, either convened or regular, for example in case of insignificant errors such as colour, dimension and/or the quality if performance characteristics of the product.
(16) Material flaws are recognized only if they are presented in writing.
(17) Our guarantee does not include the qualification of the object delivered for the usage purpose anticipated by the client and that does not comply with usage instructions, if this was not stipulated in writing.
(18) Our guarantee obligation includes only the delivery of new manufactured products. If not stipulated otherwise, the products used shall be sold such as they are, excluding any type of guarantee.
(19) No guarantee shall be claimed, especially in the following situations: improper or non-complying usage, inappropriate installation or put into service by the client or by third parties, damage caused by use and natural exploitation, inappropriate or negligent manipulation, improper maintenance, improper consumables, inappropriate construction works, mechanical, chemical, electronic, electric influences and other similar ones that do not correspond to medium standard influences already considered.

Art. 8 Liability
(1) We are not responsible for the materials provided by the client. The materials provided are not submitted to tests.
(2) Regarding damages, we take legal responsibility only
a) if either us, our legal representatives or the people involved in the fulfilment of contractual obligations are accused of violation or severe negligence
b) in case of injuries to life, physical integrity and health, all caused by fault
c) in case contractual obligations are infringed
d) in case of flaws that we have hidden for criminal purposes or whose absence was guaranteed
e) if according to the guarantee law of the products personal injuries or material damages in relation to objects for personal use are covered by the guarantee.
We are not liable for any other kind of compensation.
(3) An essential contractual obligation represents an obligation whose fulfilment barely allows the proper execution of the contract and that the counterparties consider no matter what.
(4) In case the essential contractual obligations are infringed by fault, we are partially liable for the typical contract damage, rationally predictable.
(5) The typical contract damage shall be acknowledged within the amount of the contractual value of that specific service.

Art. 9 Regulations for provisional and final reception
(1) The following dispositions are valid both for legal reception obligations under the right of works contract and for reception obligations contractually agreed under the right of works contract.
(2) If an agreement is reached with respect to any provisional reception within our factory, it is convened with the client. The result of the provisional reception is written down in a report of provisional reception.
(3) If the provisional reception could not be materialized on time because of the client, our internal report of reception is considered to have the same effect as the report of provisional reception.
(4) In case a final reception has been agreed upon or it is due according to the law, then it will materialize only in agreement with the client, at the client's factory.
(5) The client has the obligation to receive the services that we supply, as soon as it was noticed with respect to their termination and they were already submitted to the testing stipulated in the contract.
(6) If during its own testing the client notices that the specifications included in the tender book or the specifications under contract were infringed, he shall inform us in writing. The notification shall contain an actual description of the infringement noticed in order for it to be identified and removed.
(7) The client cannot decline the reception as a result of unessential flaws. We make sure to remove any kind of flaws covered by guarantee.
(8) Essential flaws are taken care of as soon as possible and afterwards they are presented to the client in order for it to receive them; the new testing of the reception does nothing more but to determine the elimination of any irregularity. The client writes down unessential irregularities in the declaration of receipt and classifies them as flaws, which are covered by the guarantee and that we have the obligation to remedy.
(9) In case the client refuses the reception unjustly or without any solid ground, we can reach a written agreement for a period of 14 days in which it has to declare the reception. The reception is considered to be fulfilled if the client does not take up the object during the period mentioned above, respectively it does not specify in writing the essential flaws that it found. Anyway, the result is considered to be a success if the client can or could use it productively.
(10) Once the reception has been concluded our liability for observable flaws is excluded, since the client did not decide to invoke any flaw that it is aware of.
(11) At our request, partial services that were already traded must be received

Art. 10 Place of performance, procedural headquarters, applicable law
(1) The place of performance of all claims resulting from the business relationship between us and the client is Dettingen, Germany.
(2) The exclusive procedural headquarters for all receivables resulting from the business relationship, as well as cheques and exchanges is represented by the place of performance, in case the client is a trader, a public law legal entity or a special public law heritage. At the same time, if the client decides so, it is entitled to request for the procedures to be carried out at its general procedural headquarters.
(3) In case of all conflicts resulting from the contracts which are governed by these General Business Conditions and in case of all disagreements resulting from the business relationships between us and the client the law of the Federal Republic of Germany shall be applied exclusively. The implementation of the United Nations convention in relation to sale-purchase contracts (CISG), as well as that of the international private law is excluded.

Art. 11
Final dispositions
If the individual dispositions of these conditions have no total or partial impact, this does not affect the efficiency of all other dispositions.

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