

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

of
BURKARD METALLPULVERVERTRIEB GMBH

1. Scope of application

Sales and deliveries made by Burkard Metallpulververtrieb GmbH (hereinafter referred to as "BMV") shall be made exclusively in accordance with the following General Terms and Conditions of Sale and Delivery (hereinafter referred to as "Delivery Terms") which Customer accepts by the placing of an order or the acceptance of the delivery. The Delivery Terms shall also apply to all future transactions of BMV with Customer. The applicability of Customer's conflicting or supplementary terms and conditions shall be excluded, even if BMV does not expressly object to these terms and conditions.

2. Conclusion of Contract

2.1 Offers and other quotations of price by BMV shall be non-binding. A contract shall not materialize until it has been confirmed by BMV in a written order confirmation, and shall be governed exclusively by the contents of the order confirmation and these Delivery Terms. All arrangements which are met between BMV and Customer for the purpose of execution of this contract are to be laid down in this contract in writing. Oral agreements or promises made to their effectiveness of the written confirmation by BMV, provided they are not already agreed with BMV or have not been given by a representative with comprehensive representation power (especially "prokura"). Oral subsidiary agreements shall be documented for proof purposes in writing.

2.2 BMV reserves all rights to the sales documentation (in particular pictures, drawings, size and weight specifications) and to the samples. These items must not be made available to third parties and shall on demand be returned to BMV without undue delay (in so far as these items have not been consumed or processed).

3. Delivery Dates

3.1 Deadlines and delivery periods ("delivery dates") are only binding if they have been confirmed in writing by BMV or have been agreed with BMV or a representative with comprehensive representation power and if Customer has advised BMV of or provided BMV with all the information of documentation required for the performance of such delivery in due time and if Customer has paid any agreed payments. Delivery dates shall start on the date of the order confirmation. In the event of additional or supplementary contractual agreements the delivery dates shall be extended accordingly. For the observance of terms of delivery and dates of delivery the time of the service is authoritative ex works or ramps. They count with announcement of the dispatch readiness as kept if the product cannot be sent without the fault of BMV in time.

3.2 In the case of unforeseeable and unavoidable events which lie beyond the sphere of influence of BMV and for which BMV does not bear any responsibility - such as Acts of God, war, natural disasters or industrial disputes - BMV shall for the duration of such events be released from its contractual obligations to deliver or perform on time. Stipulated deadlines shall be extended for the length of such disturbance; Customer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable or should it continue for more than two months each party shall be entitled to rescind the contract.

3.3 With regard to delivery items, which are not produced by BMV, the obligation of BMV to deliver shall be subject to the correct and timely receipt of such delivery items by BMV.

3.4 If deliveries by BMV are delayed, Customer shall only be entitled to rescind the contract if BMV is responsible for the delay and a reasonable deadline for delivery set by Customer has lapsed without success. This does not count, provided that a business firm transaction for delivery by a fixed date was agreed.

3.5 If Customer is in default of acceptance of delivery or if Customer breaches any other obligations to cooperate with BMV, BMV shall be entitled either to store the delivery item reasonably at Customer's risk and expense or to rescind the contract.

3.6 BMV shall be entitled to make partial deliveries for good cause, provided that this is not unreasonable for Customer.

3.7 BMV shall be entitled to additional or short deliveries customary in this branch of business.

4. Shipment, Transfer of Risk

4.1 Provided that nothing else is agreed in writing, BMV determines the dispatch way and dispatch means as well as forwarding agent and carrier. The dispatch of the product will regularly be insured. Further assurances against damages of all kind are carried out only at explicit wish of Customer and at his expenses.

4.2 The risk shall pass to Customer at the time when BMV makes the delivery item available at the agreed place of delivery. Should shipment or allocation be delayed on grounds for which Customer bears responsibility, the risk shall pass to Customer at the agreed delivery date or at the expiration of the agreed delivery period or upon notification to Customer of the readiness for shipment of the delivery item.

5. Prices, Payment Terms

5.1 Unless the parties have agreed upon a certain price, the price shall be determined by the price list of BMV as applicable at the date of the conclusion of the contract.

5.2 All prices of BMV shall generally include the costs of shipment to the agreed point of delivery but exclude the applicable statutory VAT. Only for the delivery of delivery items comprising less than 50 kg the cost of shipment (freight) will be charged separately in addition to the agreed price according to the actual handling costs.

5.3 BMV is entitled to change accordingly its prices if cost reduction or increase of costs happen later than 12 weeks after contracting, in particular on the basis of duty deliveries and import duties of the country of destination, wage settlements or material price increases. BMV will prove this to Customer upon request.

5.4 In so far as the delivery items are produced abroad and thus need to be imported into the country of Customer, the following shall apply:

- In the case of deliveries originating outside the EU the prices of BMV shall include - corresponding with the DDP cost provisions (Incoterms 2000) - where applicable, the duties, taxes and other charges payable upon export and import as well as the costs of customs formalities payable upon export and import.

5.5 BMV shall be entitled to invoice partial deliveries as set out in Clause 3.6.

5.6 If not provided otherwise, payment without reduction shall be due within 30 days upon receipt of BMV's invoice. If this payment period expires without payment, Customer shall be in default. Payments by Customer shall only be deemed as payment once BMV can dispose of the amount.

5.7 If Customer is in default, BMV shall be entitled to default interest according to the applicable statutory default interest rate. The assertion of further damages due to default shall remain unaffected.

5.8 Checks shall only be accepted upon special agreement and by way of provisional performance and with no further costs or bank charges for BMV.

5.9 Customer shall only be entitled to set off if its counterclaim is uncontested or has been finally adjudicated. Customer shall only be entitled to assert a right of retention in so far as its counterclaim is based on the same contract and is uncontested or has been finally adjudicated.

5.10 Customer shall only be entitled to assert a right of retention in so far as its counterclaim is based on the same contract and is uncontested or has been finally adjudicated.

5.11 In the event that BMV becomes aware of the risk of Customer's deficiency to perform ("*mangelnde Leistungsfähigkeit*") after the conclusion of the contract, BMV shall be entitled to make all pre-payments deliveries subject to pre-payment or the provision of a security by Customer. If such pre-payments or securities are not rendered within a reasonable additional period of time granted by BMV, BMV shall be entitled, notwithstanding any further rights, to rescind totally or partially some or all of the contracts concerned. BMV shall be entitled to assert further rights.

5.12 If payment is agreed in other currency than euro (EUR) (foreign currency), BMV is entitled to reduce or raise the purchase price in such a manner when invoicing that the amount stated as per invoice corresponds to the euro-equivalent, as it was calculated in the foreign currency at the time of contracting.

6. Retention of Title

6.1 The delivered goods shall remain the property of BMV until any and all claims of BMV arising under its business relationship with Customer have fully been paid.

6.2 In the case of a running account, this retention of title shall secure the account balance to which BMV is entitled.

6.3 Customer shall only be entitled to sell the products subject to retention of title ("retention products") within the course of proper business transactions. Customer shall not be entitled to pledge the retention products, to effect chattel mortgages or to make other dispositions endangering BMV's title to the retention products. Customer hereby assigns its claim under any future resale to BMV; BMV hereby accepts such assignment. Should Customer sell the retention products after processing or transforming or after joining, blending or mixing them with other goods or together with other goods, the assignment of claim shall only amount to such portion of the value equivalent to the price agreed to between BMV and Customer plus a safety margin of 10 % of that price. Customer is granted the revocable authorization to collect the claims assigned to BMV in a fiduciary capacity in its own name. BMV is entitled to revoke such authorization and the right to resell the products if Customer is in default of the performance of material obligations such as paying BMV; in this case BMV shall be entitled to collect the outstanding money itself.

6.4 Any processing or transformation of the retention products by Customer shall always be for the benefit of BMV. If retention products are processed with other goods, BMV shall acquire joint ownership of the new goods in the proportion of the value of the retention products to the other processed goods at the time of processing. Otherwise, the rules applicable to retention products shall apply to the new goods created by processing.

6.5 Should the retention products be joined, blended or mixed with other goods, BMV shall acquire joint ownership of the new goods in the proportion of the value of the products subject to retention of title to the other goods at the date of joining, blending or mixing. Should the joining, blending or mixing of the goods occur in such manner that Customer's goods are to be viewed as the principal thing ("Hauptsache"), it shall be deemed to have been agreed that Customer shall assign proportionate joint ownership to BMV. Customer shall hold the joint ownership created in such manner in custody for BMV.

6.6 Customer shall provide BMV at all times with all desired information concerning the retention products or claims assigned to BMV under this contract. Attachments or claims by third parties to the retention products shall immediately be reported to BMV by Customer and accompanied by the necessary documentation. Customer shall at the same time advise the third party of BMV's retention of title. The costs of a defense against such attachments and claims shall be borne by Customer.

6.7 Customer is obliged to treat the retention products with due care for the duration of the retention of title.

6.8 Should the realizable value of the securities exceed all of BMV's claims which are to be secured by more than 10 %, Customer shall be entitled to demand release to the extent of such excess.

6.9 Should Customer be in default of material obligations such as paying BMV and BMV rescinds the contract, BMV shall be entitled - without prejudice to any other claims - to demand the return of the retention products and to make use of them for the purpose of satisfying its matured claims against Customer. In such case, Customer shall grant BMV or any agents for BMV immediate access to the retention products and to surrender these to them.

6.10 In the case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same security effect as in Germany, Customer shall do everything to create equivalent security rights for BMV without undue delay. Customer shall cooperate in all measures such as registration, publication, et seq. which are essential and beneficial to the validity and enforceability of such security rights.

6.11 On BMV's demand, Customer shall be obliged to insure the retention products appropriately, to provide BMV with the respective proof of such insurance and to assign the rights arising out of the insurance policy to BMV.

7. Qualities, Warranties, Duty to Inspect the Goods

7.1 Upon passing of the risk the delivery item shall be of the agreed quality; the quality will exclusively be determined by the specific written agreements concerning the characteristics, features and specifications of the delivery item ("*Beschaffensvereinbarung*")/quality agreement").

7.2 Information provided in sales catalogues, price lists and any other informative literature provided by BMV or any other descriptions of the delivery items shall under no circumstances constitute a guarantee for any specific quality of the delivery item; such specific quality guarantee must exclusively be made in writing.

7.3 Customer's warranty rights shall require that the delivery items are inspected upon delivery without undue delay and that BMV is notified of any defects in writing and without undue delay, such a notification shall not take place later than 2 weeks following delivery; hidden defects must be communicated to BMV immediately upon their discovery in writing.

7.4 In the event of notification of defects, BMV shall have the right to inspect and test the objected delivery item. Customer will grant BMV the time and opportunity required for this purpose. BMV may also demand from Customer that it returns the objected delivery item to BMV at BMV's expense.

7.5 BMV shall at its own discretion remedy defects free of charge to Customer either by removal of the defects (e.g. by repair or restoration) or by substitute delivery of a new item free of defects (both referred to as "subsequent performance").

7.6 Customer shall grant BMV sufficient and reasonable time and opportunity for such subsequent performance. Only in urgent cases where a danger to industrial safety exists, or where it is necessary in order to avert against grand disproportional damages, or if BMV is in default with the removal of the

defect, shall Customer, after notification of BMV, be entitled to remove the defect or have the defect removed by a third party for the account of BMV.

7.7 Items which have been replaced by BMV shall upon request by BMV be returned to BMV.

7.8 No warranties shall apply where defects are due to natural tear and wear or where Customer is responsible for the defects, e.g. in cases of inappropriate or improper use, non-observance of the operations instructions, incorrect start-up of operation, faulty treatment (e.g.: excessive use) or incorrect assembly or installation by Customer, the use of unsuitable spare parts or the execution of inappropriate repair works, provided that BMV does not bear the responsibility for such defects.

7.9 BMV shall bear the costs of shipment, travel, labor and material for subsequent performance.

7.10 In the case that the subsequent performance fails or is unreasonable for Customer or if BMV has refused subsequent performance according to Section 439 Subsection 3 of the German Civil Code, Customer may then, at its own discretion, rescind the contract, reasonably reduce the purchase price or claim damages pursuant to Clause 8 of these Delivery Terms or the reimbursement of its expenditures.

7.11 The period of limitations for claims for defects amounts to 12 months from the hand-over of the delivery item to Customer. For claims for damages due to other reasons than defects of the delivery item or for rights of Customer with respect to defects concealed in bad faith or defects caused intentionally the statutory period of limitations shall apply.

8. Liability and Damage Compensation

8.1 Subject to the regulation in clause 8.2 the contractual and non-contractual liability for damage is limited by BMV and his vicarious agent as follows:

- For damages caused by a slightly negligent breach of a material contractual obligation BMV shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract;

- BMV shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

8.2 The limitation of liability as set out above does not apply to any mandatory statutory liability (in particular to liability under the German Product Liability Act) or to any liability for a specific guarantee accepted by BMV nor to any liability for culpably caused personal injuries.

8.3 The Purchaser shall take all reasonable measures necessary to avert and reduce damages.

9. Product Liability

Should Customer sell the delivery item in an unchanged state or upon processing, transforming, joining, blending or mixing them with other goods, it shall indemnify BMV for any product liability claims by third parties, provided that Customer is responsible for the defect causing such liability.

10. Industrial Property Rights

In the case that Customer bindingly prescribes in what matter BMV shall produce the delivery items by providing instructions, specifications, manuals, drafts or drawings, Customer shall warrant that BMV will not be in breach of any third party rights, such as patents, utility models or other proprietary rights or copyrights. Customer shall indemnify BMV for any third party claims which may be brought against BMV in this respect.

11. Data Protection

BMV is entitled to process the data of Customer obtained by a business relationship or in connection with a business relationship irrespective whether the data came from Customer himself or from a third party in the meaning of federal data protection act (Bundesdatenschutzgesetz). This reference substitutes the notification according to federal data protection act that personal data about Customer are stored and are processed by means of EDP.

12. General Provisions

12.1 Any amendments of and any supplements to the contract and/or these Delivery Terms as well as any subsidiary agreements must be in writing, provided they are not already agreed by BMV or have not been given by a representative with comprehensive representation power (especially "prokura").

12.2 If a provision of the contract and/or these Delivery Terms is fully or partially invalid, the validity of the remaining provisions shall remain unaffected hereby.

12.3 The language of the contract shall be determined independently from the language of the contract negotiations by the express choice of BMV in the offer or order confirmation. Contract language may either be German or English.

12.4 Place of performance of BMV's delivery is BMV's place of business. The exclusive venue for all disputes arising out of this contractual relationship shall be Düsseldorf. BMV shall also be entitled to sue Customer in any other court having statutory jurisdiction.

12.5 In so far as these Delivery Terms or an express Party agreement do not provide otherwise, the Incoterms in their version as applicable at the time of the conclusion of the contract shall also be consulted for the construction of the contract.

12.6 The laws of the Federal Republic of Germany shall apply with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).