

General Terms and Conditions
of BREUER & SCHMITZ GmbH & Co. KG
applicable in business dealings with commercial enterprises

1. Applicable terms, object of the agreement

1.1.

The General Terms and Conditions set out here shall apply to **material** contracts concluded with enterprises within the definition of Section 310 German Civil Code (Bürgerliches Gesetzbuch, "BGB"). Contrary purchasing conditions shall not form part of the agreement; no explicit repudiation is necessary on our part. By placing the order and/or taking receipt of the delivery, the customer is acknowledging our General Terms and Conditions.

1.2.

We shall be bound by the order after having issued a written confirmation or commenced the execution of the order.

2. Quotation, cost estimates, prices, right to change prices

2.1.

The quotations, and the prices and delivery capacities set out in our catalogues, print materials, letters and electronic media are subject to change.

2.2.

Our prices are listed in Euro and are valid ex works, and include the relevant rate of value-added tax, excluding packing, shipment, excise duty and insurance, all of which will be separately invoiced wherever applicable.

2.3.

With respect to all orders, including call-off orders and multiple delivery contracts – for which the delivery, as provided for in the contract or at the request of the customer, takes place more than four months after the placement of the order, we are authorised to pass on any material and labour price increases occurring between contract conclusion and actual delivery.

3. Transfer of risk and shipping costs

The goods are delivered on the account and at the risk of the customer. We accept no liability for damage or loss occurring during transport, including in the event of F.O.B. deliveries. Our liability to properly pack and load shall end once the freight carrier has taken receipt of the goods without complaint.

4. Payment conditions and consequence of non-performance (invoice)

4.1.

Our invoices are payable in accordance with the conditions set out in our price lists and quotations.

4.2.

Bills of exchange are not accepted. Cheques shall only be accepted with a view to payment, and subject to the equivalent value being credited to our account.

4.3.

If the agreed payment date is not observed, the customer shall be in default, without the need for any additional reminder. From this point in time, our payment demand will accrue interest at the statutorily permissible interest rate. We shall also levy a processing charge of € 5.00 in respect of the second, and each additional reminder notice.

4.4.

If any faults exist, the customer does not have a right of retention, unless the delivery is obviously defective or the customer has an obvious right to refuse to accept the goods. In such a case, the customer shall only have a right of retention insofar as the retained amount is reasonably proportionate to the existing faults, and to the foreseeable costs of subsequent performance (especially any fault elimination).

4.5.

The customer may only exercise an offset against our payment entitlements, if this concerns undisputed counter-claims or those confirmed by a res judicata decision.

5. Delivery periods and liability in respect of delivery times

5.1.

Our stated delivery dates shall be deemed to be approximate, unless we have expressly confirmed in writing that the date in question is a "binding delivery date".

5.2.

We shall have fulfilled the delivery period if, before it has expired, the delivery has been dispatched from the works or if the customer has been notified of its readiness for shipment.

If the specified delivery date cannot be fulfilled as a consequence of force majeure or circumstances outside of our control, this shall entitle us to postpone the delivery for a reasonable period of time or, if it is now impossible for us to render performance, to cancel the agreement wholly or partially. Cancellation is subject to the condition that we promptly notify the customer of the inability to deliver on schedule, and reimburse any counter-performance already rendered by the customer.

6. Warranty and rules on liability

6.1.

Irrespective of the obligations to inspect goods and report faults as set out in Section 377 German Commercial Code (Handelsgesetzbuch, "HGB"), the customer is obliged to inspect the goods for obvious defects and to raise complaints in writing respect of such obvious defects within four weeks of having received the goods, or within four weeks following the detection of those faults, which are only subsequently identified. Following the expiry of this period, the goods shall be deemed accepted with regard to the obvious fault.

6.2.

In the case of a justified defect complaint, we shall be obliged, free of charge, to subsequently improve the delivered goods or to make a substitute delivery (subsequent performance), the choice resting with us. If the subsequent improvement or the substitute delivery proves unsuccessful, despite a second attempt, or if we unjustifiably refuse to render subsequent performance or delay it unreasonably, the customer shall be entitled to reduce the payment or, provided the defect liability does not relate to construction work, it may also opt to cancel the agreement.

6.3.

We accept no liability other than the claims in respect of delays and faults as provided for above, unless the damage/loss was caused by our grossly negligent or deliberate breach of duty or that on the part of our statutory representatives or vicarious agents, or if it is a case of death or personal injury attributed to a negligent or deliberate breach of duty by us, our statutory representatives or vicarious agents.

6.4.

Claims established under the Product Liability Act or by way of a warranty are not affected.

7. Limitation period, time limits

7.1.

The limitation period for claims and rights in connection with faults in the delivered goods - irrespective of the legal basis - is one year from the time the delivery was handed over to the customer.

7.2.

However, this does not apply in the cases provided for in Section 438 (1) no. 1 BGB (defective title in real property), Section 438 (1) no. 2 BGB (buildings, articles intended for building works), Section 479 (1) BGB (the recourse claims of the commercial entity) or Section 634 a (1) no. 2 BGB (buildings or works, the product of which consists of rendering planning or supervisory services in this respect). These cases are subject to a statutory limitation period of three years.

7.3.

The limitation periods defined in No. 7.1 are subject to the following provisos, however:

a)

The limitation periods generally do not apply in the event of the deliberate or deceitful concealment of a defect, or in the event that we have issued a guarantee concerning the quality of the delivered goods.

b)

The limitation periods likewise do not apply to compensation claims in the case of a grossly negligent or deliberate breach of duty by us, or one of our statutory representatives or vicarious agents, in the case of the culpable breach of material contractual duties – not concerning the delivery of a defective article or the supply of defective works – by us, one of our statutory representatives or a vicarious agent, in cases of death or personal injury caused by us, one of our statutory representatives or a vicarious agent, or by way of claims pursuant to the Product Liability Act. The statutory limitation periods shall apply in such cases.

7.4.

The limitation period for all claims commences with the outbound delivery.

7.5.

Unless otherwise expressly determined, the statutory provisions concerning the commencement of the limitation period, its suspension, or changes to and the rearrangement of time limits shall remain unaffected.

7.6.

The provisions above shall not entail any change to the burden of proof to the customer's detriment.

8. Industrial property rights, tools, models and drawings

8.1.

If the goods are manufactured according to drawings or other such customer specifications, the customer shall be responsible for ensuring these are accurate and do not breach any third-party industrial property rights; the customer shall indemnify us in respect of all claims made by a rights owner in this connection.

8.2.

We may also fully or partially charge for tools, patterns, jigs and equipment required for the ordered goods. These shall remain our property, even if we have produced them to the customer's order and/or the customer has paid for them in full or in part. If these are produced to the customer's special instructions, they shall be used solely for the customer's orders, provided it continues to fulfil its duties of acceptance and payment, and so long as the business relationship endures.

9. Retention of title

9.1.

The delivered goods shall remain our property until the fulfilment of all our claims against the customer under the business relationship.

9.2.

The customer is permitted to process and resell the delivered goods as part of its normal business operations. This power shall end if the customer is in default of payment, or if the customer ceases servicing its debts or if an application is filed for the commencement of insolvency proceedings over its assets. The customer is obliged to only resell the reserved goods if this is subject to the retention of title, and to ensure that the receivables from the resell are transferred to us. Using the goods subject to retention of title in order to fulfil works contracts and contracts for work and materials. It is not permitted to perform any other forms of disposition in relation to the goods subject to retention of title, particularly not to arrange liens or to use the said goods as collateral security. It is not permitted to transfer the receivable established by the disposal of our goods subject to retention of title, unless this concerns an assignment by way of a non-recourse factoring arrangement, which is notified to us and under which the proceeds of the factoring exceed the value of our secured claims. Our claim shall immediately fall due at the time the proceeds of the factoring are credited.

9.3.

If the customer attaches the delivered goods or the new goods to real property, without the need for any separate declaration it shall also assign to us its receivable to which it is entitled for making the attachment, up to the amount of the invoiced price of the delivered goods.

9.4.

Until it is notified to the contrary, the customer shall be entitled to collect its receivable as assigned to us. The customer shall promptly pass on to us the payments made on the assigned receivables, but only up to the amount of the secured claim. If there is a justified interest, especially in the event of a default of payment, cessation of payments, the commencement of insolvency proceedings, disputes concerning bills of exchange protest or substantiated indications that the customer is over-indebted or that it is about to become unable to service its debts, we shall be entitled to cancel the customer's authority to collect payments. We shall also be entitled, having first issued a prior warning and granted a reasonable grace period, to disclose the assignment for security, release the value of the assigned receivables and demand that the customer discloses the security assignment to its own buyers.

9.5.

If credible evidence is produced of a legitimate interest, the customer must provide us with the information and documentation necessary to enable us to exercise its rights vis-à-vis these buyers.

9.6.

During the time that the retention of title exists, the customer shall not be permitted to enter into any bailment or security arrangements. The customer must promptly inform us of any liens, expropriations or other dispositions or third-party interference. Resale of the delivered goods or the new goods is only permitted to resellers as part of normal business activities, and only subject to the condition that the payment of the equivalent value of the delivered article be made to us. If the value of the existing securities exceeds the security interests by more than 15%, upon demand by the customer we shall be obliged to release securities to this extent; we shall have discretion regarding the securities to be released, but the interests of the customer must be observed. The value of the securities is deemed to be the invoice value at which the customer procured goods from us.

9.7.

Based on the retention of title, we shall be entitled to demand the surrender of the delivered goods, in the event that we rescind this agreement. The same applies in the event that the customer ceases servicing its debts, or if an application is filed for insolvency proceedings against its assets. The customer shall bear all the costs incurred in connection with the justified repossession of the delivered goods. We shall be entitled to commercially exploit the repossessed goods in any way we deem fit.

10. Place of performance and legal venue, applicable law

10.1.

The place of performance is our business location in Solingen.

10.2.

The general legal venue for all disputes arising from this contractual relationship shall be that court with jurisdiction over the place in which our company is registered.

10.3.

All supplies and services shall be governed by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. This also applies if the customer's place of business is registered abroad.

Solingen, November 2016