

# International Terms and Conditions of Sale of Burmeier GmbH & Co. KG

(for customers, not resident in Germany)



## § 1 Applicability of these International Terms and Conditions of Sale

- (1) The terms and conditions set out in these International Terms and Conditions of Sale shall form an integral part of the Contract of Sale. They apply to all Contracts of Sale concluded on and/or after 1 July 2017 with buyers whose place of business is outside of Germany. These International Terms and Conditions of Sale apply exclusively. The buyer's terms and conditions which conflict or differ from these International Terms and Conditions of Sale and/or from the legal provisions do not apply, even if we do not object to them or render performance or accept the buyer's performance.
- (2) These Terms and Conditions of Sale do not apply if the goods are bought for personal, family or household use and we knew or ought to have known at any time before or at conclusion of the Contract of Sale that the goods were bought for any such use. The buyer declares that the goods are not bought for personal, family or household use.

## § 2 Formation of the Contract of Sale

- (1) A Contract of Sale always requires a written order of the buyer.
- (2) We may accept the buyer's written order with our order acknowledgement (hereinafter the "Order Acknowledgement") within 10 (ten) calendar days after receipt of the buyer's order.

## § 3 Applicable Law

- (1) The Contract of Sale is governed by the United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention / CISG) in the English version and all legal questions beyond the scope of the CISG are governed by the Swiss law of obligations (Obligationenrecht). The CISG also applies to all agreements as to the jurisdiction of courts and arbitral tribunals.
- (2) Should commercial terms be used the Incoterms 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions of Sale.

## § 4 Specifications of the goods; Third party rights

- (1) The goods to be delivered have to conform to the specifications set out in the Order Acknowledgement. To the extent no specifications are stated in the Order Acknowledgement, the goods conform with the contract if they are fit for the purpose which is usual in Germany and fit for the purpose for which goods of the same description are usually used for in Germany. Unless otherwise explicitly agreed to, the goods do not have to conform to any laws or regulations existing outside of Germany. Secondhand goods are delivered without any liability for their conformity.
- (2) Should the buyer intend to use the goods in circumstances which are unusual or which could entail a particular risk to the safety and health of any person, the buyer has to inform us in writing about these intentions before concluding the Contract of Sale.
- (3) Rights and claims of third parties (in particular rights and claims based on title or industrial property rights) only constitute a defect in title if these rights and/or claims are in force and registered in Germany and impede the use of the goods in Germany.

## § 5 Obligation to deliver; Passing of risk

- (1) We have to deliver the goods referred to in the Order Acknowledgement including a packaging that is suitable for the means of transportation.
- (2) Delivery has to be made FCA Incoterms 2010 at the place of delivery

indicated in the Order Acknowledgement. If no place of delivery is indicated in the Order Acknowledgement, delivery has to be made FCA Incoterms 2010 at our premises in 32791 Lage/Germany. We are not obliged to contract for carriage and we are not obliged to inform the buyer that the goods have been delivered or that the carrier or another person nominated by the buyer has failed to take the goods within the time agreed.

- (3) Adherence to the delivery date respectively the delivery period stated in the Order Acknowledgement is not of the essence and non-adherence to the delivery date or the delivery period respectively does not constitute a fundamental breach of contract. If delivery periods are agreed to, we reserve the right to determine the exact delivery time within the delivery period.
- (4) All delivery dates and delivery periods are dependent upon the buyer performing all of his obligations in due time. In particular, the buyer has to procure or confirm any necessary permits, drawings etc. and make agreed payments in due time.
- (5) We are entitled to make partial deliveries and to invoice these separately.
- (6) The passing of risk takes place with delivery in accordance with § 5 sec. 2. Should the buyer fail to take delivery, the risk passes at the time the buyer fails to take delivery.
- (7) In addition to our statutory rights we are entitled to suspend the performance of our obligations if there are reasonable indications that the buyer will not perform his obligations under the Contract of Sale, in particular not be able to pay the agreed price in due time.

## § 6 Invoice and other documents

- (1) Irrespective of the Incoterms-clause used, we are not obliged to clear the goods for export. We will however at the buyer's risk and expense apply for any necessary export licences and formalities as regards customs provided that the buyer has provided us with all necessary information.
- (1) We will provide the buyer only with such documents explicitly stated on the Order Acknowledgement.

## § 7 Force Majeure

- (1) Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed delivery period and delivery time as well as any other obligation.

## § 8 Obligation to pay the purchase price

- (1) The buyer is obliged to pay the agreed purchase price to the bank account nominated by us. If the costs of packaging and/or – if we have deviating from § 5 sec. 2 agreed on a different Incotermsclause with the buyer – the freight costs are stated separately, then these costs have to be paid in addition to the purchase price to the bank account nominated by us. The place of payment is 32051 Herford/Germany. Banking fees accrued outside of Germany will be borne by the buyer. The payment shall be made without any deductions and is due for payment on the date or within the time limit as stated on the Order Acknowledgement. A time limit for payment stated on the Order Acknowledgement shall be calculated from the date of invoice. In the absence of any payment dates or time limits stated on the Order Acknowledgement, payment shall be made within 30 (thirty) calendar days after date of invoice. The buyer's acceptance of the goods is no precondition for the payment to become due.
- (2) The agreed prices shall exclude any statutory VAT applicable at the date

of delivery.

- (3) The buyer is only entitled to exercise a lien or to suspend his performance if this is based on the same transaction as well as based on a due and undisputed or finally adjudicated counterclaim of the buyer.
- (4) The buyer may only offset any claims insofar as the buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.
- (5) If and till such time the buyer is in arrears with payment of the purchase price, the buyer is obliged to pay interest at the rate of nine (9) percentage points above the base rate of the German Central bank per annum.

## § 9 Non-Conforming goods; Goods with a defect in title

- (1) The goods do not conform to the contract if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 1 and sec. 2.
- (2) The goods are not free from rights or claims of third parties if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 3.

## § 10 Duty of examination and notification

- (1) Without prejudice to the legal provisions, the buyer is obliged to examine the goods comprehensively in respect of deviations as regards type, quantity, quality and packaging. If necessary, the buyer is obliged to conduct the examination with the help of external third parties.
- (2) Notice of non-conformity has to be made in within ten (10) calendar days. For very obvious non-conformities, the period for such notification starts with the delivery of the goods, in all other cases after the buyer has discovered the non-conformity or ought to have discovered it. Notice of non-conformity has to be given in writing. The notice of non-conformity has to clearly indicate and describe the non-conformity in such a way that we can take remedial actions.
- (3) Apart from the aforesaid as well as with respect to defects in title, the statutory provisions apply.

## § 11 Limitation Period

- (1) Without prejudice to claims resulting from a malicious, grossly negligent or intentional conduct as well as claims due to injury of life, body or health, the buyer's claims in respect of the delivery of non-conforming goods and goods with a defect in title become time-barred one (1) year after delivery of the goods. For second-hand goods § 4 sec. 1 sentence 4 applies.

## § 12 Remedies in case of non-conforming goods and goods with a defect in title; Limitation of Liability

- (1) In case of delivery of non-conforming goods, the buyer can claim delivery of substitute goods or declare avoidance of the Contract of Sale only in accordance with the legal provisions.
- (2) To the extent any costs associated with performing remedies are increased by the fact that the buyer has removed the goods to a place not stated in the Order Acknowledgement or, in the absence of such an indication, to a place other than the buyer's place of business, these costs will be borne by the buyer.
- (3) Delivery of substitute goods or repair does not lead to a restart or extension of the limitation period.
- (4) If we deliver non-conforming goods or goods with a defect in title or breach any other obligation resulting from the Contract of Sale or the business relationship with the buyer, the buyer is entitled to demand damages only in accordance with the following provisions and any recourse to concurrent bases of claim (in particular of a non-contractual nature) is excluded:
  - a. We are not liable for the conduct of our suppliers or subcontractors. Neither are we liable for damages to which the buyer has contributed.
  - b. The buyer has to prove that either our directors or employees or other members of staff have deliberately or negligently breached contractual obligations owed to the buyer.
  - c. In case of liability, the amount of damages for late delivery is limited to 0,5 per cent for each full week of delay, up to a maximum of 5

per cent of the purchase price of the goods delivered late or not at all, and in case of remedies because of delivery of non-conforming goods and/or goods with a defect in title and in cases of all other breach of obligations is limited to the purchase price of the goods affected.

- d. Irrespective of § 12 sec. 4 c), we are not liable for loss of profit.
  - e. The aforesaid limitations in § 12 sec. 4 do not apply
    - i. to injury of life, body or health,
    - ii. if we have acted maliciously, gross negligently or intentionally,
    - iii. if we are liable according to product liability laws, and
    - iv. to liabilities which may not be excluded or limited according to the applicable laws.
- (5) Apart from the aforesaid, the statutory provisions apply.

## § 13 Right to use Software; Rights in documents etc.

- (1) In case the goods include software, with the delivery of the goods the buyer is hereby granted a non-exclusive, royalty-free license to use the software, but strictly and only in connection with the goods purchased under this Contract of Sale. With the exception of the right to make one backup copy, the buyer is not entitled to copy the software.
- (2) We reserve all intellectual property rights in any documents, pictures, drawings etc. (collectively "Documents") arising in connection with the performance of the obligations arising under the Contract of Sale and such Documents shall belong exclusively to us.

## § 14 Other Provisions

- (1) Title of the goods that have been delivered remains with us until all of our claims against the buyer have been settled.
- (2) We are not obliged to perform any obligations not stated in the written Order Acknowledgement or in these International Terms and Conditions of Sale.
- (3) There are no side agreements to the Contract of Sale.
- (4) Any amendments to a concluded Contract of Sale require our written confirmation, duly approved by signature.
- (5) The buyer is not entitled to assign his rights and obligations against us to a third party.
- (6) The place of performance for delivery is governed in § 5 sec. 2, the place of payment in § 8 sec.1. For all remaining obligations and irrespective of the agreement of a differing Incoterms-clause, the place of performance is agreed to be 32791 Lage/Germany, including for a replacement delivery, for the rectification of non-conformities and for the restitution of the contractual obligations in case of avoidance of the Contract.
- (7) All communications, declarations, notices etc. (hereinafter collectively "Notices") are to be drawn up exclusively in German or English. Notices by means of fax or email fulfil the requirement of being in writing. A signature is not required, unless these International Terms and Conditions of Sale explicitly require a signature.

## § 15 Agreement upon jurisdiction and arbitration

- (8) If the buyer's place of business is located within the European Economic Area and/or within Switzerland, for all disputes, including disputes under insolvency law, arising out of or in connection with a Contract of Sale and/or these International Terms and Conditions of Sale, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the buyer and us, the state court which has jurisdiction for 32791 Lage/Germany shall have exclusive jurisdiction. Instead of bringing an action before the state court which has jurisdiction for 32791 Lage/Germany, we are also entitled to bring an action before the state court of the buyer's place of business.
- (9) If the buyer's place of business is located outside of both the European Economic Area and Switzerland, all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract of Sale and/or these International Terms and Conditions of Sale, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the buyer and us shall be finally resolved by

arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

#### **§ 16 Severability**

- (1) If provisions of these International Terms and Conditions of Sale should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the buyer are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.

Lage / Germany, 26. July 2017