

Terms and Conditions

Bilz Werkzeugfabrik GmbH & Co. KG
Vogelsangstraße 8 73760 Ostfildern
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I. Scope:

1. The following general terms of delivery and payment are an integral part of all legal transactions concluded by our company in accordance with section 310, paragraph 1 of the German Civil Code (BGB) and shall apply to all – including future – contracts about deliveries and other services rendered including service contracts and contracts for work and materials, consultations, proposals and other ancillary services. These terms and conditions shall be supplemented by the terms specified on the price list of the contracted supplier in connection with third-party deals. We shall not recognize the purchaser's conditions of purchase even if we do not expressly object to these conditions upon receipt.
2. Our quotations shall be subject to change without notice. The validity of any oral agreements and assurances made by our employees requires our written confirmation.
3. Terms of trade shall be conclusively interpreted in accordance with the Incoterms 2010.
4. All specifications such as dimensions, weights, illustrations, descriptions, installation sketches and drawings included in pattern books, price lists and other printed matters shall, while created to the best of our knowledge, be estimates and, therefore, provided without obligation. The same shall apply to any specifications provided by our factories. Models and drawings shall remain our property.
5. Within the meaning of these terms and conditions, the purchaser as mentioned in service contracts and contracts for work and materials shall also be the "buyer".

II. Prices:

1. All prices are listed in EURO (€) ex works or store excluding carriage and VAT. Additional costs including packaging, transport, insurance, customs or similar costs as well as installation shall be billed separately.
2. If specifications or other third-party costs included in the price agreed upon change or incurred again at a time later than 4 months after conclusion of contract, we shall have the right to change our prices accordingly.
3. We reserve the right to raise the price agreed upon for quantities that have not yet shipped if circumstances arise due to changes in raw material availability and/or changes in the economic situation which result in a significant price increase in connection with the production and/or the purchase of the affected products when compared to the time the price was agreed upon. In such a case, the customer shall have the right to cancel any orders affected by such a price increase within 4 weeks after notifying us accordingly.
4. It shall be understood that we cannot execute orders with a total value of under EUR 50 without charging an additional processing fee amounting to EUR 20. The minimum quantity for order of special items shall be 3 units.
5. If tools (catalogue items only) need to be returned, the return requires a completed return delivery slip approved by a contact person at Bilz. The following provisions must be observed in this regard:
 - a) A request for a return delivery slip shall be submitted to the contact person in charge at Bilz and must include the designation and item quantities of the items the purchaser wishes to return. The delivery note number or invoice number must be noted on the return delivery slip.
 - b) The returned items shall then be subjected to an inspection by the contact person at Bilz which is conducted to determine the items' stock rotation, value and suitability to be returned to the standard warehouse. The result of such inspection shall be binding for all parties involved.
 - c) Once the return delivery has been approved by the contact person at Bilz, an itemized return delivery slip which can be used to return the items in question shall be issued.
 - d) Restocking fees amounting to 20% (or at least EUR 50) of the items' gross value shall apply to all accepted returns. Restocking costs shall be offset automatically by any credit that is to be granted.

- e) Returns of products carrying special labelling and as well as special tools cannot be accepted.

III. Payment and settlement of accounts:

1. Payment must be made without cash discounts in such a way that the amount paid is available to us at the date of maturity. The costs for the payment transaction shall be borne by the purchaser. The purchaser shall have the right to retention and offset only to the extent that the purchaser's counter claims are undisputed or have been established as final and absolute.
2. By force of the authorization we have been given by the companies belonging to our group (section 18 of the Stock Corporation Act (AktG)), we shall have the right to offset any claims the purchaser may have against us or any company belonging to our group based on any legal grounds whatsoever. This shall also apply if one side stipulated payment in cash and the other side stipulated payment by note or other services on account of performance. If applicable, these agreements shall only refer to net total. If claims have different dates of maturity, our outstanding debts shall be due at the latest by the deadline of our liability and settled at the value date.
3. If the purchaser falls in arrears with the payment of a significant amount or fails to honour a bill of exchange at maturity or if circumstances arise which give grounds to the assumption that the purchaser's financial circumstances have deteriorated significantly after the conclusion of contract and which may endanger our payment claim, we shall be entitled to render all of our claims that are based on the same legal relationship due for payment and demand collateral or payment in advance for all outstanding shipments and services arising from the business relationship unless the purchaser provides sufficient collateral.
4. All statutory regulations on default of payment shall remain unaffected.

IV. Performance of deliveries, delivery periods and dates:

1. Our delivery obligation shall be subject to correct and punctual delivery to us on the part of our suppliers unless we are responsible for any such incorrect or delayed delivery.
2. Any stated delivery periods shall be estimates. Delivery periods shall begin with the date of our order confirmation and be valid only if all order details have been clarified and all obligations on the purchaser's part have been met in good time. Such obligations shall include the procurement of all official certificates, the opening of letters of credit as well as the provision of guarantees or advance payments.
3. If collecting goods not intended for the territory of the common market within the European Union, the purchaser or the agent authorized by the purchaser shall provide us with a copy of the export declaration that is required for tax purposes. Otherwise, the purchaser shall have to pay a portion of the invoice value in the amount of the value added tax payable on domestic deliveries.
4. Legally binding for the observance of delivery periods and dates is the time the shipment leaves our factory or warehouse. They shall be deemed observed upon notification of readiness for shipment in case the goods cannot be shipped in time due to no fault on our part.
5. In case of force majeure we shall have the right to extend the delivery period for as long as the hindrance is in effect plus a reasonable period of preparation. This shall also be applicable if such events occur during an already existing delay. Force majeure includes monetary and trade policies as well as other sovereign acts, strikes, lockouts, disruption in operation for which we are not responsible (e. g. fire, breakdown of machinery, lack of raw materials or energy), hindrance on the traffic ways, delays during import/customs clearance as well as all other circumstances which, due to no fault on our part, significantly impede deliveries or render them impossible. It shall be immaterial in this regard whether such circumstances occur at our company, the supplier or a sub-supplier. If the performance of the agreement becomes unacceptable to one of the parties due to the aforementioned events, in particular if the performance of essential portions of the agreement is delayed by more than 6 months, the affected party shall have the right to withdraw from the agreement.

V. Retention of title:

1. All goods delivered shall remain our property (retained goods) until all claims, in particular all current account balance claims, arising under the business relationship as well as all receivables established by the insolvency

administrator on a unilateral basis as part of a choice of fulfilment. The same shall apply to claims that emerge in the future and conditional claims, e. g. arising from acceptors' changes and also if payments are made for particularly designated claims. Our claims shall also include the claims receivable by the companies of our group that are specified in no. III 2.

2. The handling and processing of retained goods shall be performed by us without obligation in accordance with section 950 of the BGB. The handled and processed goods shall be deemed retained goods in accordance with no. 1. If retained goods are processed, combined and blended with other goods by the purchaser, we shall be entitled to own parts of the new item on a prorated basis commensurate with the invoice value of the retained goods proportionate to the invoice value of the goods used. If our property is extinguished by combining, blending or processing, the purchaser shall at the time the contract is concluded assign to us his right of ownership of the new item in the amount of the invoice value of the retained goods and preserve it for us without charge. Our co-ownership rights shall be deemed retained goods within the meaning of no. 1.

3. The purchaser may sell the retained goods only in the course of normal business dealings and subject to his normal terms and conditions provided that he is not in default and the receivables arising from the resale of the goods are transferred to us pursuant to nos. 4 - 6. The purchaser shall not be permitted to make any other use of the retained goods.

4. The purchaser hereby assigns to us all receivables arising from the resale of the retained goods. They shall serve as collateral to the same extent as the retained goods. If the purchaser resells the retained goods together with other, third-party goods, the claim arising from such resale shall be assigned to us on a prorated basis commensurate with the invoice value of the retained goods proportionate to the invoice value of the third-party goods sold. If goods in which we hold co-ownership rights pursuant to no. 2 are sold, a part commensurate with our co-ownership rights shall be assigned to us.

5. The purchaser shall be authorized to collect receivables from the resale of retained goods. Such authorization shall lapse upon being revoked by us, however no later than upon the purchaser defaulting on payment, failing to honour a bill of exchange or instituting insolvency proceedings. We shall only utilize our right of revocation if it becomes evident to us that our entitlement to claim payment from the purchaser is threatened on account of a substantial deterioration of the purchaser's financial circumstances. At our request, the purchaser shall immediately notify his customers of the assignment of his receivables to us and furnish us with the documents required to collect payment.

The purchaser may not assign any receivables from the resale of the retained goods unless this entails genuine factoring, we are notified of such a factoring transaction and the proceeds of the factoring transaction exceed the value of our secured claim. Our claim shall be due for immediate payment upon the proceeds from the factoring transaction being credited.

6. The purchaser shall notify us immediately of any seizure or other impairment by third parties. The purchaser shall bear all costs arising from averting such intervention or returning the retained goods unless such costs are reimbursed by third parties.

7. If the purchaser is in default of payment or fails to honour a bill of exchange at maturity, we may claim back the retained goods and, if necessary, enter the purchaser's premises for this purpose. The same shall apply if it becomes evident to us that our entitlement to claim payment from the purchaser is threatened on account of a substantial deterioration of the purchaser's financial circumstances. This shall not constitute a withdrawal from contract. Insolvency regulations shall remain unaffected.

8. If the invoice value of the existing collateral exceeds the secured receivables including ancillary receivables (interests, costs etc.) by a total of more than 50%, we shall be obliged to return collateral of our choice at the purchaser's request.

VI. Acceptance inspections:

1. In cases in which it has been agreed that the goods are to be subject to an acceptance inspection, such acceptance inspection may only be conducted at our factory or warehouse immediately after notification that the goods are ready for such acceptance inspection has been received. The purchaser shall bear the personal and technical acceptance inspection costs in accordance with our then applicable price list or the current price list of the supplier.

2. If the acceptance inspection is not performed in a timely manner or either partially or fully for reasons for which we are not responsible, we may dispatch the goods without prior acceptance inspection or store them at the purchaser's expense and risk and issue a corresponding invoice.

VII. Dispatch, transfer of risk, packaging, partial deliveries, and continuous delivery

1. We shall determine the method and route of dispatch as well as the forwarder and carrier.

2. In the case of call-off orders, goods which have been declared as being available for dispatch must be called off immediately, failing which we shall – subject to sending the purchaser a written warning – be entitled to dispatch them at the purchaser's expense and risk or, at our discretion, store them in our warehouse and immediately invoice them.

3. If for reasons for which we are not responsible, transportation of the goods on the planned route or to the planned destination in the planned period of time is rendered impossible, we may deliver the goods via a different route or to a different destination, it being understood that the purchaser shall bear any additional costs incurred in this connection. The purchaser shall be given a prior opportunity to make any comments.

4. Risk, including the risk of the goods being seized, shall pass to the purchaser for all transactions including carriage-free or carriage-paid transactions upon the goods being made available to the forwarder or carrier, however, no later than upon their leaving the warehouse or factory. We shall only arrange for insurance to be effected if instructed to do so by the purchaser.

5. We shall be entitled to effect reasonable partial deliveries. Surpluses or shortfalls exceeding the contracted quantity shall be permissible in keeping with standard industry practice.

6. In the case of orders entailing continuous delivery, we are to be notified of call-offs and quantities of types for roughly identical monthly quantities, failing which we may determine this using our own discretion.

7. If the individual call-off orders exceed the total amount contracted, we shall be entitled but not obliged to supply the excess quantity. We may invoice the excess quantity at the prices prevailing on the date of call-off or delivery.

VIII. Notice of defects, warranty and liability:

Our warranty for faults in the goods and missing properties warranted by contract shall be limited to the following scope:

1. Any material faults in the goods shall be reported in writing immediately, however, no less than seven days after delivery. Material faults which cannot be detected within this period notwithstanding extremely careful examination shall be reported in writing immediately after being discovered, however, no later than before the expiry of the warranty period – with all processing to be ceased forthwith.

2. In the event that a prior acceptance inspection of the goods has been agreed upon, the purchaser shall not have any right of recourse with respect to any material faults exhibited by the goods which could have been detected during the contractual inspection.

3. If the complaint is justified and lodged within the requisite period, we may, at our discretion, either remedy the fault or supply fault-free replacements. In the event that subsequent performance fails or is rejected, the purchaser may reduce the purchase price or – if we fail to successfully remedy the goods within a deadline set by the purchaser – rescind the contract. The purchaser may not demand rescission of contract unless the fault substantially reduces the value or serviceability of the supplied goods. The purchaser shall relinquish all rights with respect to the fault if he does not immediately give us an opportunity to verify the fault and, in particular, fails to furnish the goods or samples immediately after being asked to do so.

4. We shall grant the same warranty on the remedy of the fault and the supplied fault-free replacement that we grant on the original shipment or service.

5. We shall be liable in accordance with all applicable legal regulations in the case of a culpable breach of any material contractual obligations or cardinal obligations. However, our liability in this case shall be limited to foreseeable and typically occurring damage.

6. If the purchaser claims damages based on gross negligence, compensation for damages shall be limited to the foreseeable and typically occurring damage. The liability in cases of culpable injury of life, body or health shall remain unaffected.

7. If our liability is excluded or limited, such exclusion and limitation shall also apply to senior employees and vicarious agents.

IX. Damages and statute of limitation:

1. Our liability for damages shall not exceed the scope set forth in no. VIII, 5 to 7, irrespective of the legal nature of the damages claimed.

2. The provision set forth in no. 1 shall not apply to claims pursuant sections 1 and 4 of the German Product Liability Act (Produkthaftungsgesetz). Unless the limitation of liability as set forth in no. VIII 5 and 6 applies to claims covered by manufacturer's liability according to section 823 of the BGB, our liability shall be limited to the indemnification paid by the insurance company. If this limitation of liability does not apply, we shall be liable for the amount covered.

3. The period of limitation applicable to claims for defects shall be 12 months from the date of transfer of risk. This shall not affect the periods of limitation for recourse action pursuant to sections 478, 479 of the BGB.

X. Place of fulfilment, legal venue, and applicable law

1. The place of fulfilment for our deliveries shall be the factory in the case of delivery ex works or our warehouse in all other cases. The legal venue is Stuttgart. We shall also have the right to take legal action against the purchaser at the purchaser's legal venue.

2. The relevant laws of the Federal Republic of Germany for legal relationships between domestic parties are applicable for all legal relationships between us and the purchaser.

XI. Miscellaneous:

1. Export declaration

If the purchaser is domiciled outside the Federal Republic of Germany (foreign customer) and he or his agent collects goods, or transports or dispatches them to a foreign location, the purchaser shall be required to furnish us with the export papers required for tax purposes. Failing this, the purchaser shall be liable to pay the value added tax on the invoice amount applicable to transactions inside Germany.

2. VAT identification number

In the event of deliveries from Germany to another member country of the EU, the purchaser shall notify us of his VAT identification number under which his income is taxed within the EU. Failing this, the purchaser shall be required to pay the VAT amount stipulated by law in addition to the agreed purchase price.

When deliveries from the Federal Republic of Germany to another member country of the EU are invoiced, the VAT arrangements of the recipient member country shall apply if the purchaser is registered in another EU member country for VAT purposes or we are registered for VAT purposes in the recipient member country.

XII. Severability clause

If any provision of the agreement concluded with the customer is held partially or fully invalid by a court of competent jurisdiction, all other terms and conditions shall remain in full force and effect. In this case, the invalid provision shall be substituted by a valid provision that is as close to the economic purpose of the invalid provision as possible.

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