

General Terms and Conditions of Sale and Delivery

Benien Produktionstechnik GmbH, Lange Wand 13, DE-27753 Delmenhorst

1. Scope

- 1.1. These GTC shall apply to transactions concluded between Benien Produktionstechnik GmbH (hereafter, the supplier) and companies, legal entities governed by public law and special funds under public law (hereafter, the Customer).
- 1.2. Our supplies, services and offers shall be made exclusively in accordance with the following Terms and Conditions. The Terms and Conditions shall also apply to all future business relations, even if not expressly agreed upon. Exceptions to these General Terms and Conditions shall only be valid if confirmed by us in writing. Any terms and conditions of purchase of the Customer with contrary effect shall not constitute part of the contract if they exclude the incorporation of our General Terms and Conditions and/or if these terms and conditions are not expressly rejected.

2. Conclusion of the contract

- 2.1. Our offers are in principle subject to confirmation. Contracts and contractual amendments relating to our supplies and services shall only take effect upon written confirmation of the order by us, or upon delivery at the latest.
- 2.2. The content of the contract shall be determined exclusively on the basis of our written order confirmation. The information contained therein does not constitute a commitment. Any objections to our written order confirmation must be raised promptly after receipt, failing which they will be rejected.
- 2.3. Statements made by our front and back office staff, including in particular commitments, promises and side agreements, shall only be valid if expressly confirmed by us.

3. Quality of our supplies

The agreed quality of our contractual products shall include exclusively the characteristics and features stated in our order confirmation. Statements made by us shall only constitute a quality guarantee if they are expressly designated as such in writing.

4. Dispatch and delivery schedules

- 4.1 The prices stated in the order confirmation are subject to value added tax at the applicable rate.
- 4.2 Prices are stated ex works (EXW, Incoterms 2010). All additional costs shall be borne by the Customer, including in particular the costs of packaging, freight, postage, insurance, etc. The same shall apply for costs arising as a result of the *ex post* amendment of the order by the Customer.

5. Payments, discount, late payment, prohibition on offsetting

- 5.1 Each of our invoices shall be due for payment upon receipt and, unless agreed otherwise, payment shall be made within 10 days of following the receipt of each invoice. In case of reciprocal trading transactions, we shall be entitled to charge the statutory maturity interests from the due date. From the time when a delay in payment occurs, we shall be entitled to charge default interests set at the legally applicable amount. In addition, in case of a delay with a payment claim, we will charge in accordance with the statutory requirements a lump sum amounting to EUR 40.00. Our right to claim reimbursement of any further damage incurred remains unaffected. Any forfeited lump sum shall be charged against any further damage claims.
- 5.2 Any discount agreed shall under all circumstances relate only to the invoice value without ancillary costs. Any discount shall be conditional upon full compliance by the Customer with any obligations towards us at the time the

discount is deducted. Unless agreed otherwise in writing, the discount period shall commence upon receipt of each invoice.

- 5.3 If the Customer is more than 10 days late in compliance with its payment obligations towards us accounting for more than 15% of the amounts due to us, we shall be entitled to demand payment of all outstanding amounts related to our business relationship from it immediately, even if payment terms have been agreed upon and have not yet expired. Even if other payment arrangements have been agreed upon under contract, in such an eventuality we may render further supplies concurrently against payment or against the provision of collateral of equivalent value.
- 5.4 The Customer shall only be entitled to offset counterclaims if its counterclaims are undisputed, ready for decision or if the counterclaims have been determined with legal effect. The Customer shall only be entitled to retain payments, if permitted under the same contract of supply that gave rise to the claim to be paid, and if the Customer's counterclaim is undisputed, ready for decision or if the counterclaim has been determined with legal effect.

6. Delivery, late delivery and export controls

- 6.1 Any delivery periods stated in the order confirmation shall in all cases be non-binding unless the delivery period has been expressly agreed upon in writing as binding. Any projected delivery periods stated shall commence at the earliest upon receipt of the order confirmation. They shall be extended in the event of a *force majeure* occurrence, operational disruptions caused through no fault of our own, operational disruptions to one of our suppliers, strikes or transportation difficulties, *ex post* amendments to the order or if the Customer is late in complying with its duties of cooperation under the relevant contractual relationship, including in particular by providing an appropriate unloading point along with access, or is late in performing under other contractual relationships.
- 6.2 If a delivery period has expressly been agreed upon as binding in writing, we shall only bear liability for losses resulting from any delay if caused wilfully or through gross negligence. As a matter of principle, we shall not accept liquidated damages that are independent of the actual loss caused.
- 6.3 Should delivery become impossible through no fault of our own or in the event of a delay in delivery owing to *force majeure*, we shall be entitled to withdraw from all or part of the contract.
- 6.4 If a place of delivery outside the Federal Republic of Germany is agreed upon under contract, all deliveries shall be made subject to the reservation that shipment is not prevented by any national or international export controls, including in particular embargoes or other sanctions.
- 6.5 The Customer shall be obliged to provide all information and documentation required for export or transportation to the place of delivery. Delays caused by export inspections or approval procedures shall suspend any time limits and delivery periods. If the Customer fails to comply with this obligation, our obligation to deliver shall be deemed to have been fulfilled at the time the goods are ready for shipment.

7. Late acceptance, transfer of risk, dispatch, prompt reporting of defects

- 7.1 The risk of deterioration and loss shall transfer to the Customer when the goods are reported as ready for dispatch and have been prepared for dispatch, unless we are responsible for the deterioration or loss. Delivery shall occur at the risk of the Customer; this shall also apply to carriage-free deliveries from the premises of the supplier.

7.2 We may at our choice either dispatch at the cost of the Customer or store at the cost and risk of the Customer any contractual products that are not accepted or not collected.

7.3 We shall arrange dispatch at our discretion, unless the Customer has provided any specific instructions. Damage caused during transit shall not affect our claim to payment. Shipment shall occur carriage forward without packaging.

Unloading by the Customer or its agent shall constitute acceptance of the delivery by the Customer. In signing the shipping documents, the Customer confirms the accuracy and proper condition of the delivery, with reference in particular to completeness, type and size. Damage caused during transit shall be noted by the Customer on the consignment note or waybill.

7.4 The Customer shall inspect the contractual products upon shipment or consignment and shall report evident defects and damage promptly, no later than 2 weeks after receipt of the delivery. Should it fail to do so, it shall forfeit its claims relating to a breach of duty. The foregoing shall be without prejudice to §§ 377 and 378 of the German Commercial Code. Claims arising in relation to a defect shall become time barred 12 months after delivery. This shall not apply if longer periods are prescribed by statute, as under §§ 438, 479 and 634a of the German Civil Code, and in cases involving loss of life, personal injury or damage to health, in the event of a wilful or grossly negligent breach of duty or the fraudulent failure to disclose a defect. If the Customer instructs us to deliver the contractual products direct to its customers or to a third party processor, the Customer shall ensure itself through controls carried out at the customer / third party processor that it is able to comply with the requirement to submit any claim promptly. Shipment of the contractual products to such persons shall be regarded as equivalent to shipment to the Customer itself. In such cases, the Customer shall be at liberty to inspect the contractual products at a pre-arranged time at our production facilities prior to dispatch to the third party.

8. Reservation of ownership

8.1 We reserve the right of ownership over any contractual product delivered until all claims under the business relationship have been satisfied in full, including the claim to the balance under any current account relationship.

8.2 The Customer shall be entitled to sell or process goods subject to reservation of title as part of its ordinary course of business. The Customer may not conclude pledges or collateral assignments. The Customer shall inform us promptly in the event of attachment, seizure or any other order or third party intervention. The Customer hereby assigns to us in advance as collateral the claims arising out of the onward sale of the goods subject to reservation of title. Goods subject to reservation of title may be handled and processed for us as the producer pursuant to § 950 of the German Civil Code, although such action shall not impose any obligation on us. Processed goods shall be regarded as goods subject to reservation of title. If goods subject to reservation of title are joined to or mixed with other products/manufactures, we shall have joint ownership over the new object in proportion with the invoiced value of the goods subject to reservation of title to the invoiced value of the other products/manufactures. If our ownership is extinguished through processing or mixing, the Customer hereby transfers to us the ownership rights vested in it over the new object in proportion with the invoiced value of the goods subject to reservation of title.

8.3 If, taking account of the case law of the highest courts, we do not have any protectable security interest in the collateral provided to us, we shall renounce it upon request by the Customer insofar as no protectable security interest exists (any longer).

9. Warranty

9.1 The warranty period shall extend to one year after

transfer of risk over the contractual products. The Customer shall only be entitled to exercise warranty claims if it has properly complied with its duty to inspect and report under §§ 377, 378 of the German Commercial Code. No warranty claims shall arise in the event of insignificant or industry-standard deviations from the agreed or ordinary quality. Claims for defects shall likewise not be available in the event that usability is only slightly impaired, in the event of natural wear and tear or consumption or in the event of losses arising after transfer of risk as a result of improper or careless handling, excessive loading, inappropriate equipment, defective handling or processing or due to special external influences not foreseen under the contract. If the Customer carries out changes to the supply either itself or through a third party, no claims for defects shall likewise be available for the resulting consequences.

Changes aimed at technical improvement or to comply with statutory or administrative requirements shall also not establish any warranty claims. The Customer may not infer any rights to further partial deliveries from a defective partial shipment.

9.2 Provided that notice of the defect is intimated properly and within the applicable time limits, in the event that the contractual products are faulty we shall honour the warranty, at our choice, either by rectification or replacement (supplementary performance). If supplementary performance is unsuccessful, the statutory claims shall be available. However, the Customer shall have no right of withdrawal in relation to merely minor breaches of contract, including specifically negligible defects.

9.3 There shall be no warranty obligation

a) if the quality defect or loss arose by virtue of the fact that:

- notwithstanding a request to do so, the Customer did not promptly provide the opportunity for rectification and/or
- the contractual products were handled incorrectly by the Customer and/or
- the contractual products were altered in a manner not approved by us;

b) if the Customer has failed to comply with its duty to inspect and report under §§ 377 and 378 of the German Commercial Code and paragraph 7.3.

9.4 Damages claims shall be excluded unless the losses were caused wilfully or through gross negligence or are attributable to the absence of characteristics which have been expressly warranted in writing along with a statement of intention to bear liability beyond the existing warranty claims, taking account of these GTCs.

9.5 The Customer shall compensate us for the costs arising out of an unjustified notice of defects. We shall levy a lump-sum claim fee of 0.5% of the net contractual price or, in the event of a partial delivery, of the portion of the invoice relating to the delivery objected to for the administrative and logistical costs arising for us due to the unjustified notice of defects, up to a maximum of € 1,000.00. If the Customer furnishes proof that the costs occasioned by the defect are lower than the lump-sum claim fee, the fee shall be reduced accordingly. The foregoing shall be without prejudice to our entitlement to claim any higher damages.

10. Limitations of liability, time barring of damages claims

10.1 Our liability for damages shall in principle be excluded. This shall not apply

- to loss or damage arising from injury to life, limb or health based on an intentional or negligent breach of duty on the part of us or on the part of a legal representative or vicarious agent of us;
- to loss or damage based on an intentional or grossly negligent breach of duty on the part of us or on the part of a legal representative or vicarious agent of us;

- to loss or damage based on the violation of a material contractual obligation. A material contractual obligation shall in particular be an obligation that is such that the contract can only be duly and properly executed if it is fulfilled and the other party generally can and does rely on compliance therewith. In such a case, our liability shall be limited to compensation of the foreseeable, typically occurring loss or damage at the time of the conclusion of the agreement;
- to loss or damage resulting from a violation of a guarantee issued by us;
- to claims arising from mandatory statutory liability, in particular such as pursuant to the Product Liability Act.

The provisions of this clause 10.1 shall not affect the statutory burden of proof.

- 10.2 Any damage claims of the Customer owing to defective contractual products shall become time-barred one year after risk for the contractual products has been transferred to the Customer. This shall not apply to the claims where our liability shall not be limited according to Sec. 10.1. The provisions of this clause 10.2 sent. 1 shall not affect the statutory burden of proof.

11. Ownership rights and copyright

- 11.1 Unless agreed otherwise in writing, we shall retain ownership and, where permitted under copyright law, all rights of usage and exploitation under copyright over offers, sketches, designs, graphs, prototypes, programs, digital data, files etc. They may not be made accessible to third parties without our written approval.
- 11.2 If we manufacture contractual products according to designs, models, prototypes or other specifications provided by the Customer, the Customer shall bear sole liability if any rights, including in particular third party rights under copyright, are infringed by execution of the order. The Customer shall hold us harmless against all third party claims relating to such infringements of rights.

12. Moulds provided, tools; test parts

- 12.1 If the Customer is to provide moulds, tools or other items, these must be furnished at the cost of the Customer promptly and in sufficient number and must be free from defects.
- 12.2 Unless agreed otherwise in writing, the Customer shall retain ownership of these items; should they be damaged or become unusable during the course of production, all costs arising in relation to replacement/repair shall be borne by the Customer.
- 12.3 We undertake to retain such items in safe storage for a period of 2 years after their most recent use.
- 12.4 Our liability for moulds, tools, production devices and the like provided by the Customer shall be limited to the standard of care which we would apply in relation to our own affairs.

13. Place of performance, jurisdiction, choice of law, severability

- 13.1 The exclusive place of performance for all supplies, services and offers shall be 27753 Delmenhorst.
- 13.2 All current and future claims resulting from the business relationship with companies, including claims relating to bills of exchange and cheques, shall fall under the exclusive jurisdiction at the registered office of Benien Produktionstechnik GmbH, DE-27753 Delmenhorst.

- 13.3 The contractual relations with the Customer shall be governed by German substantive law, even if the contractual products are to be delivered abroad or the contract concluded has any other foreign element. German private international law, foreign law or bilateral or multi-lateral international agreements, including in particular the UN Convention on Contracts of International Sale of Goods of 11 April 1980, shall not apply.
- 13.4 Should any of the terms of these Terms and Conditions of Business be or become invalid or unenforceable, this shall not affect the validity of the remaining terms.
- 13.5 The English version of these General Terms and Conditions is intended solely to facilitate reference. The German version shall be authentic.

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