

## **General Terms and Conditions of Bloksma Engineering GmbH Materialflusstechnik**

### **Preliminary remarks**

(1) All deliveries and services are governed by German law, in particular by the German Civil Code (*BGB*), the German Commercial Code (*HGB*), the German Act on Copyright and Related Rights (*UrhG*), the German Product Liability Act (*ProdHaftG*) and the EC Machinery Directive, each as amended. However, the General Terms and Conditions below take precedence for the respective individual transaction and any follow-up contracts. We are entitled to modify the General Terms and Conditions without restrictions at any time. The customer will be informed of such modifications in writing. They will be deemed accepted, unless the customer objects in writing by registered letter with return receipt. We will point out these consequences separately. The buyer is required to send the objection to us within one month upon receipt of the notification of modification. In addition, any deviating provisions in our order confirmation apply to the extent they are permitted by the principle of freedom of contract under German law.

Any deviating provisions of the customer are binding for the company only if they have been expressly confirmed by the company in writing.

(2) The customer may not assign claims against us.

(3) Agreements, contractually provided types of use, the assumption of quality risks, guarantees or other representations prior to or upon conclusion of the contract are effective only if they have been made in writing.

(4) Any further agreements or verbal commitments, in particular regarding contractually provided types of use, the assumption of procurement risks, guarantees or other representations, are not deemed to have been made by the company. The persons acting on behalf of the company are not authorised to make oral amendments to the pre-formulated text of the contract, enter into additional oral agreements or give oral representations beyond the content of the written contract.

### **1. Conclusion of contract**

The supply and service contract comes into effect only after the company has confirmed the order in writing.

### **2. Prices**

(1) A price is deemed binding only upon the written order confirmation by the company and provided that the order data the order confirmation is based on remain unchanged. Unless stated otherwise, the prices of the company are understood to be ex works in euros plus the statutory value added tax applicable at the time of delivery.

(2) Packaging, postage, insurance and other shipping costs are not included and will be charged additionally.

(3) Any alterations made to the object of the work at the request of the customer after confirmation of the order will be charged to the customer.

(4) Design drawings, tools, samples and similar preliminary work as may be requested by the customer will be charged, even if the order is not placed. To this extent, these Terms and Conditions apply even before placement of the order.

### **3. Delivery volume, delivery period**

(1) Production-related excess or short deliveries of up to 10% of the ordered quantity are permitted.

Modifications in production due to technical reasons as well as deviations in dimensions, weights, colours, samples, patterns, etc. remain reserved as long as they are reasonable for the customer, i.e. in particular if they are modifications and/or deviations for maintaining or improving the value of the goods. This applies accordingly to subsequent deliveries.

2) Partial deliveries are permitted to a reasonable extent and can be invoiced separately, provided that the interests of the customer are preserved, the scope of delivery, in particular, remains unchanged and the customer can reasonably be expected to accept the delivery in parts at various times under due consideration of the nature of the object of performance and its typical use.

(3) The delivery times indicated by the company refer to the date of dispatch of the goods. They are deemed complied with if the goods leave the factory at that time or the readiness for delivery is notified to the customer.

(4) The agreed delivery period always applies after all technical and commercial details have been clarified.

Thus, delivery periods are basically deemed non-binding. Delivery dates are binding only if the delivery date has been confirmed as binding to the customer in writing.

The delivery period is also deemed complied with if the delivery item has been dispatched or notification of readiness for dispatch has been given not later than on or before the 15th calendar day after the delivery date.

(5) If the production of the work or the performance of the delivery requires any action by the customer, the delivery period does not begin until after such action has been fully executed by the customer.

(6) If the delivery period is exceeded, the customer grants a reasonable grace period of not less than three weeks.

7) If the delivery period, including the reasonable grace period, is not complied with, the company is liable exclusively for the invoice value of the quantity of goods not delivered in time, however at the maximum up to the amount of the negative interest.

(8) Force majeure, interruptions of operations and similar unforeseeable circumstances not attributable to the company release the company from compliance with the delivery periods for the duration of such interruption of operations. In such cases, the customer is, in particular, not entitled to withdraw from the contract and/or claim damages.

(9) If the contracting parties have agreed on the goods to be collected by the customer and the object of performance is not collected by the customer on the agreed date, or the dispatch is postponed at the request of the customer, or the customer does not collect the goods or the object of performance after notification of readiness for collection including a reminder, the customer is charged the costs incurred for storage and financing, however not less than 0.5% of the corresponding net amount for each month, or part thereof, of the delayed acceptance, but not more than a total amount of 10%, unless the customer can prove lower costs. The company reserves the right to claim higher damage.

Moreover, after having set a reasonably extended period and such period having fruitlessly expired, the company is entitled to perform delivery with another delivery item.

If changes to additional and subsequent orders lead to a delay in delivery of the delivery item, the above provisions apply accordingly.

(10) The customer must accept delivered items without prejudice to his rights under section 4.

(11) At the request of the company, the customer is obliged to declare in writing within a reasonable period whether, or not, he withdraws from the contract due to delay in delivery or insists on delivery.

#### **4. Warranty**

(1) The warranty period is two years for newly manufactured items and one year for used, reworked items. If the customer is a company, a legal entity under public law or a special fund under public law, the warranty period is one year.

(2) The customer must inspect the goods for freedom from defects immediately upon delivery. Apparent defects must be notified to the company in writing immediately, however not later than within one week of receipt of the goods. If obvious defects are not notified, not notified in time or not notified in the correct form, such defects will not be covered by the warranty.

(3) Any other defects must be notified to the company within one week of becoming aware of them.

(4) The company is liable for advertising statements or errors and/or omissions in the operating instructions only towards such customers who are consumers.

5) Minor defects not significantly affecting the value, suitability or usability of the work are excluded from warranty.

(6) The company is entitled to supplementary performance at its discretion. This means that it may choose either to remedy the defect or make new delivery. If the supplementary performance fails, the company is entitled to repeat such supplementary performance. Even in case of repeated supplementary performance, the company can choose between new delivery or remedial of defects.

(7) The customer is not entitled to withdraw from the contract and/or to claim damages until after supplementary performance has failed repeatedly. Claims for damages only exist to the extent the company is responsible for gross negligence or wilful intent. In any case, damages are limited to the negative interest. Compensation for

consequential loss caused by a defect is excluded, unless it is based on wilful intent.

(8) Any liability for breach of obligations arising from the German Equipment and Product Safety Act (*Geräte- und Produktsicherheitsgesetz*) is limited to products having been placed on the market after 01 May 2004. Moreover, claims for damages only exist for losses having been caused by an intentional or grossly negligent breach of obligations. To the extent permitted, liability is limited to the value of the product.

## 5. Breaches of obligations

(1) The company's liability for breaches of obligations is limited to grossly negligent or intentional breaches of obligations.

(2) Basically, the company is not liable for breaches of obligations resulting from work performed in compliance with drawings, artwork, samples or patterns checked by the customer and released by the customer as manufacturing documents. The company is not liable for the constructive design and the correctness of any reproduced material. However, the company is obliged to inform the customer immediately of the impossibility - to the extent identifiable - of the technical implementation according to submitted materials.

(3) In particular, liability for the infringement of third-party industrial property rights is excluded when work is performed according to customer's specifications. There is no obligation on the part of the company to perform checks for the existence of third-party industrial property rights.

## 6. Terms of payment

1) Unless agreed otherwise, all invoices of the company are due for payment immediately and without deduction.

The customer can only make payments with debt-discharging effect directly to the company.

(2) Any discounts, rebates or other allowances as may have been agreed apply only if all contracts between the customer and the company pending or partially unfulfilled at the time of conclusion of contract have been duly fulfilled.

(3) In the event of default, the company is entitled to demand the statutory interest. The right to claim further damages for default is reserved. In the event of default, any further claims from other deliveries and services against the customer become due immediately. This applies despite any maturity or deferment agreements.

(4) Bills of exchange are not accepted and cheques are accepted only on account of performance and if credited.

(5) If the customer is in default of payment, the company is free to refuse further performance of the contract. If the payment claim is jeopardised to a material extent, the company is entitled to demand advance payments or sufficient security. If the customer refuses advance payment or security, the company may withdraw from the contract and claim damages.

(6) Irrespective of any term to the contrary stipulated on the part of the customer, incoming payments are applied first to the costs, thereafter to interest and finally to the principal claim; in case of several claims, the older claim is paid first.

(7) If, during the period between the conclusion of contract and the date of delivery, the energy costs or costs of raw or starting material and/or costs of auxiliary and operating material increase, the company is entitled to adjust the prices by the amount by which the acquisition or production costs of the delivery item have increased. Cost reductions, on the other hand, having occurred during the same period due to the factors indicated in the first sentence are deducted. In case of a price increase, the company is obliged to explain the nature and amount of the cost increases and reductions. If price increases exceed 5% of the initially agreed price, the customer has the right to withdraw from the contract.

## 7. Reservation of title

(1) The delivered goods remain the property of the company until all claims of the company against the customer existing on the date of invoice have been paid in full.

(2) In case of treatment or processing of the goods subject to reservation of title, the company

is entitled to (co-)ownership of the resulting object, amounting to the value of the condition of the goods subject to reservation of title before treatment or processing. Goods subject to reservation of title may only be sold in the ordinary course of business of the customer. If the customer resells the goods subject to reservation of

title, he assigns the claims against the purchaser to the company at the time of the sale. The customer must oblige the purchaser to make payment directly to the company in the amount of his payment obligations resulting from the onward sale. Any exception to this provision requires the prior written agreement between the company and the customer.

If the customer has sold the claims in the course of genuine factoring, he assigns to the company the claim against the factor taking its place. The company expressly accepts this assignment.

(4) Otherwise, disposals of goods subject to reservation of title, in particular transfers by way of security or pledging, are not permitted.

(5) If foreclosure is made on the assets of the customer and such foreclosure affects the goods subject to reservation of title, the company must be informed immediately in writing by indicating all necessary data (enforcement body, file number) and, if appropriate, enclosing enforcement reports.

(6) Items having been made available to the customer by the company and not being part of the work performed as such (e.g. drafts, design drawings, tools, etc.) remain the property of the company.

## **8. Tools and moulds clause**

(1) For moulds and tools manufactured by us or any third party for the production of punched and drawn parts, etc., the customer is charged a tool cost share. Half of this share must be paid immediately and the remaining amount upon presentation of the outturn samples, strictly net. Changes before completion of the tool entitle us to demand reimbursement of the tool costs incurred by then. If the customer does not place an order for punched and drawn parts, etc. according to the order within six months, we will be entitled to charge the difference to the full tool costs. Costs for testing equipment, gauges, appliances, etc. are included neither in the tool costs nor in the unit prices. They must be provided by the customer free of charge. They will remain his property.

(2) Modifications to and repairs of tools are borne by the customer. They are not reimbursed. Maintenance of the tools with conventional lubricants and care agents is at our expense. The costs of replacing tools for reasons not attributable to us are borne by the customer. This applies, in particular, to wear and tear depending on the materials used as well as to events of force majeure.

(3) Since the tool cost share does not fully cover our expenses for the design, construction, running-in, maintenance of the tool, etc., the tools remain our property. The retention obligation expires if no further orders have been received within two years of the last delivery.

(4) The tools are exclusively used for orders of the customer. If the customer does not pay for deliveries and services as agreed, we may use the tools otherwise.

(5) If, for whatever reason, we are unable to comply with the scheduled delivery period and any grace period set by the customer and being reasonable for the customer, we will return the tools for substitute performance free of charge at the customer's request. In such case, the maintenance obligation passes to the customer. When the moulds are delivered, two sealed samples/sets of the last moulding are supplied. The customer is required to return one of them with a note of confirmation. When the mould is returned, we will proceed in the same way.

(6) If the customer concludes a supply contract with a replacement supplier, the customer must reasonably consider our interests in continuing delivery after the impediment to delivery has ceased to exist. To this end, we will inform the customer of the anticipated duration of the impediment to delivery and the expected date of our readiness to deliver when handing over the tools. The surrender according to section 5 is made immediately and independently of any agreements yet to be made in order to avoid any production complaints for the customer.

## **9. Place of performance and place of jurisdiction**

(1) The place of performance for delivery and payment is the place of the registered office of the company.

(2) The place of jurisdiction for all present and future claims arising from the business relationship, including claims relating to bills of exchange and cheques, is the place of the registered office of the company. This place of jurisdiction also applies if the customer does not have a general place of jurisdiction in Germany, or the customer relocates his domicile or usual place of residence to a place outside Germany after conclusion of the contract, or the domicile or usual place of residence of the customer is not known at the time the action is brought.

## **10. Final provisions**

The invalidity of individual provisions does not affect the validity of the other provisions. The invalid provision is deemed replaced by a commercially equivalent provision.

(Version of August 2018)