



## **GENERAL SALES & DELIVERY TERMS AND CONDITIONS bash-tec GmbH**

### **I. General**

- a. Our offers, purchase-/delivery agreements, services including consultancies shall exclusively be subject to these Terms and Conditions which apply to current business relationships as well as to all future transactions and re-orders even if the effectiveness of these Terms and Conditions is not referred to again separately. At the latest on acceptance of the goods or services, the conditions shall be deemed to be accepted.
- b. Any deviating business or purchasing terms of the Buyer are herewith explicitly rejected.
- c. Any deviating Terms and Conditions shall only be effective if they are confirmed by us in writing.

### **II. Offers**

- a. Our offers are non-binding and subject to prior sale. All purchase-/delivery agreements and all other agreements shall only become valid upon our written confirmation. The content of this confirmation shall be exclusively authoritative. Oral collateral agreements shall not be binding on us. Even amendments or additions to the agreements already concluded including these Terms and Conditions shall only be effective upon our written confirmation. This also applies to purchase-/delivery agreements concluded by agents or sales representatives.

### **III. Prices, Payments**

- a. All prices are in Euros plus the value-added tax applicable on the date of invoice. Unless other agreements have been made, our prices are quoted "ex works" or "ex stock", i.e. excluding packaging, transport, insurance, other related costs or duties. The return of the packaging pursuant to the Packaging Ordinance or the assumption of disposal costs may take place only after our previous permission.
- b. The prices are based on the commodity prices valid on the day of our order confirmation as well as on the prices charged by our suppliers. If these prices change by the date of delivery, our prices also change in the same ratio irrespective of whether earlier or later deliveries should have been made. The actual day of delivery shall be decisive.
- c. Unless otherwise agreed, payment is to be made within 21 days from the date of invoice date by bank transfer without any deduction. Bills of exchange shall not be accepted.
- d. The Buyer shall not be entitled to retain any payments or to offset counterclaims unless accepted by us or stated legally binding. The non-response to a claim asserted by the Buyer shall not mean that the claim is either acknowledged or remains uncontested. The Buyer is only permitted to assign any claims against us after obtaining our prior written consent.



- e. If we become aware of circumstances that call the creditworthiness of the Buyer into question, we shall be entitled to declare all our receivables including bills receivable immediately due and payable. We shall be entitled to perform outstanding services resulting from this business or other transactions only against advance payment or securities. If advance payments or securities are not performed, we shall be entitled to withdraw from the contract or to demand damages for non-performance.
- f. If the Buyer is in default of payment, default interest at a rate of 4% above the base interest rate of the Deutsche Bundesbank, at least 8% will be charged. A claim for further damages due to this delay remains reserved.
- g. A rebate shall only be granted under the condition that the purchase price is received on time and in the full amount. In case of insolvency, cessation of payments, bankruptcy, in-court or out-of-court settlement, cheque or bill of exchange protest as well as collection measures, the rebate or the rebate included in the net price will be dropped. The full basic or list price will again be charged.
- h. Even if notifications of defects or counterclaims are asserted, the Buyer shall only be entitled to set off, retention or reduction, if the counterclaims are ascertained as indisputable or legally binding.
- i. In the event that the Buyer gets into financial difficulties, we shall be entitled to prohibit the further processing of the goods, to take back the goods and, if necessary, to enter the Buyer's works or other storage locations to take back the goods. This taking back shall not constitute a withdrawal from the contract. The statutory provisions governing payment default shall remain unaffected.

#### **IV. Delivery time and delivery**

- a. Delivery dates and other deadlines only apply approximately and are thus non-binding. The delivery dates / delivery times shall take effect on the date of order confirmation, but not before complete clarification of all order details. Delivery dates / delivery times relate to the time of dispatch "ex works" or "ex stock" and shall be deemed as fulfilled if the goods have left the plant or warehouse by the end of this period or when the readiness for shipment has been announced. The mode of dispatch will remain at our discretion.
- b. The agreed delivery dates / delivery times shall be extended - regardless of our rights resulting from delay of the Buyer - by the period of time by which the Buyer is in default with its obligations owed to us under this contract
- c. Our suppliers and sub-suppliers shall not be deemed our vicarious agents. Our liability to ensure the timely delivery of the suppliers and sub-suppliers shall also be expressly excluded in the case that we have obliged to meet a fixed delivery date.
- d. In the event of force majeure, which shall include the impact of governmental interventions, and other events, on which we have no influence and which make delivery considerably more difficult or impossible, such as breakdowns in business operations, difficulties with the supply of materials or energy, de-



lays in transit, strikes, lockouts, lack of delivery, incorrect or delayed deliveries by our suppliers for whatever reasons, we shall be released from the obligations of the delivery contract. In so far as the Buyer cannot be expected to accept the supply as a result of the delay he may withdraw from the contract by means of a written notification to us.

- e. Should a delay occur on our part, the Buyer may withdraw from the contract after the expiry of a reasonable period if the goods have not been announced as ready for dispatch. In the event of partial delay, the Buyer is entitled to completely withdraw from the contract if there is evidence that partial performance of the contract is of no interest to him. If there is a delay in delivery on our part or if the delivery has become impossible for whatever reasons, the Buyer is not entitled to any claims for damages of whatever kind (particularly from §§ 325, 325 German Civil Code (BGB)) unless such delay or impossibility was caused by gross negligence.
- f. Partial deliveries shall be permissible. Each delivery shall be deemed an independent transaction.
- g. In the case of orders for continuous delivery (e.g. framework agreements), requests for delivery of ordered goods and type classification are to be placed with us in a timely manner. Unless otherwise agreed, the total quantity has to be called off and allocated within one year from the conclusion of the contract. If the Buyer does not fulfil this obligation, we are entitled, after expiration of a fixed time limit, to plan the distribution ourselves and deliver the goods or to withdraw from the part of the contract that is in arrears or to demand damages for non-performance. If the contractual quantity is exceeded by the individual call-off orders of the Buyer, we shall be entitled, but not obliged, to supply the surplus and reserve the right to charge the prices that apply on the day of delivery.
- h. In case of custom-made products, surplus or short deliveries of up to 5% are permissible. They are excluded from return provided that no major defects exist.

## **V. Acceptance**

- a. If acceptance is not effected, or is effected late or incompletely, we shall be entitled, on expiry of a reasonable period of grace, to withdraw from the contract, to insist on fulfilment or to resell the purchased goods and/or claim damages.
- b. In the event of delayed acceptance, the goods can be dispatched at our discretion or stored at the expense and risk of the Buyer. The goods shall be deemed as delivered in compliance with the contract upon shipment or storage and shall be invoiced.

## **VI. Transfer of risk**

- a. The risk shall pass onto the Buyer when the goods are ready for collection or handed over to the carrier or freight forwarder, at the latest upon their leaving



our warehouse or the site / warehouse of our suppliers, even if part deliveries are made.

This shall also apply to agreements that stipulate „free destination“, and the like. We are not obliged to insure the goods against transport damages or other risks.

## **VII. Reservation of proprietary rights**

- a.** We reserve the ownership of the item purchased until all payments resulting from the existing business relation with the Buyer have been received (purchase price, transport allowance, default interest, other damages caused by delay).
- b.** In the event that the business partner acts in breach of contract, in particular in the event of delay in payment, we shall be entitled to take back the goods and to enter the business partner's premises and any supervised construction sites and occupied premises. The taking back of the goods does not constitute a withdrawal from the contract, unless we would have expressed this explicitly in a written form.
- c.** After taking back the purchase item, we are entitled to utilize it and to credit the proceeds of the sale against the liabilities of the business partner, after deducting the appropriate costs for the process. Any payments shall be initially credited against the costs for legal action, then against the disposal costs, then the interest from the principal claim and finally against the principal claim itself.
- d.** The business partner is obliged to treat the items purchased carefully. He agrees in particular to insure them adequately at his own cost at the original value against damage by fire, water and theft. Provided that service and inspection work is required, the business partner must carry out such work at his own expense and in due time.
- e.** In the event of seizures or other action by third parties, the business partner must notify us immediately in writing so that we can file third party proceedings according to § 771 ZPO [German Civil Code] or take other judicial protection. To the extent to which the third party shall not be able to reimburse judicial and extra-judicial costs of an action according to § 771 ZPO, the business partner shall be liable for our loss.
- f.** The business partner is entitled to resell the items purchased in the scope of usual and proper business, provided that he assigns to us all claims in the amount of the final invoice amount (incl. value-added tax) arising from resale or processing against his customers or third parties. This assignment applies irrespective of whether the purchased items have been resold before or after processing. We hereby accept the assignment.
- g.** The business partner is not entitled to dispose of the reserved goods in any other way, in particular such as pledging and security by transfer of ownership.



- h. We authorize the business partner, subject to revocation, to collect the claims on his own behalf as long as he meets his payment obligations towards us. If the business partner fails to meet his payment obligations or if an application for the opening of insolvency proceedings or the implementation of an out-of-court settlement has been filed with the creditors for the settlement of debts according to § 305 Section 1 No. 1 Insolvency Regulations (IR), or if a cheque or a bill of exchange is protested, or if the business partner stops his payments, we will make use of our right to collect outstanding debts. In such a case, the business partner is no longer entitled to collect payment.

For this purpose, the business partner indicates the assigned claim and informs us of the debtor stating all information necessary for the collection of the claim and the surrender of all relevant documents (purchase contract, copy of the invoice and delivery note).
- i. The processing or modification of the purchased item by the customer will always be carried out on our behalf. If the purchased item is processed with other objects not belonging to us, we shall acquire the joint ownership of the new resulting item in proportion of the value of the ordered item to the value of the added objects at the time of the processing. Apart from this, the same conditions that apply to the item delivered under reserve shall also apply to the item resulting through processing.
- j. If the purchased item is mixed with other objects not belonging to us, we acquire the joint ownership of the new resulting item in proportion to the value of the purchased item in relation to the value of the added objects at the time of the mixing. If the articles are mixed in such a way that the item of the business partner is to be considered as the main item, the parties agree that the business partner shall transfer proportionate co-ownership to us. This way the business partner safeguards the sole ownership or co-ownership on our behalf at no charge.
- k. Upon the expiry of the authority to collect in accordance with number VIII, the business partner's right of exploitation does not apply. He shall no longer be entitled to incorporate the goods subject to reservation of title, inseparably mix or process such.
- l. On request of the business partner, we undertake to release the securities to which we are entitled, as far as the realizable value of our securities exceeds the claims to be secured by more than 20%. We shall be responsible for the selection of the securities to be released.

#### **VIII. Warranty and liability**

- a. The goods delivered by us have to be unpacked and carefully examined immediately upon arrival at the place of destination (§ 377 HGB ((German commercial code)). Should a defect become apparent, it has to be reported in writing without delay in detailed form, at the latest within 10 days from arrival of the goods at the contractually defined destination.



- b.** Hidden defects must be immediately filed in writing upon their discovery, but not later than 7 days after their discovery. After the expiry of the deadline, the goods shall be deemed faultlessly approved as supplied.
- c.** Any damages that have been assessed at arrival of the goods shall be noted on the shipping document/delivery note before unloading and must be countersigned by the forwarding agent/carrier or the forwarding agent must submit a proof serving as a document for a claim for damages against the forwarding agent/carrier. This shall also apply to transport by ship or rail.
- d.** Notifications of defects shall be submitted in due form and time, otherwise warranty demands can no longer be invoked.
- e.** After the notification of a complaint, the Buyer may not make use of the purchased items without our approval. In case of infringement, the Buyer shall lose his warranty claims.
- f.** The Buyer is obligated to store the entire delivery carefully without any rights to reimbursement for storage or other costs.
- g.** In the event of defects or the lack of guaranteed characteristics, we provide a warranty for a period of 6 months, provided that the Buyer uses the goods in the usual and intended way starting on the date of collection, delivery ex works or the notification that the goods are ready for dispatch.
- h.** Defects on component surfaces or the surface coating on non-visible surfaces that do not affect the technical functionality shall be permissible. In case of irrelevant deviation from the agreed quality of the goods, irrelevant impairment of the usability, natural wear and tear, excessive use, unsuitable equipment as well as damages occurring after the transfer of risk due to faulty or negligent treatment and in case of subsequent improper repairs, modifications and the like, a warranty claim does not exist. The liability is excluded.
- i.** Defects in the goods arising during the warranty period shall be repaired or replaced (at large -subsequent fulfillment-) at our own discretion. If the subsequent fulfillment performed by us repeatedly fails within a reasonable period following the initiation, the Buyer shall be entitled to withdraw from the contract at his own discretion.
- j.** In the event of unjustified complaints, the Buyer shall be liable for the costs incurred by us.
- k.** The Buyer is not entitled to any warranty claims for goods that have been sold as so-called 2A material. This shall apply to named damages and those which usually have to be assumed.
- l.** We shall not assume any liability for damages resulting from improper storage, operation or natural wear and tear.
- m.** We shall not assume any liability for the goods supplied being suitable for the purposes intended by the Buyer.
- n.** Any claims for damages of the Buyer against us, our legal representatives or our vicarious agents shall be excluded unless we breach a contractual obligation with malicious intent or gross negligence.



- o. Indemnity claims because of breach of industrial property rights like patents or utility patents are excluded to resellers.

**IX. Conditions for liability**

- a. We shall not assume liability for damages caused by simple negligence. This limitation of liability does not apply to damages of injury of life, body and health as well as of fundamental breach of contract. Unless we are accused of intentional breach of contract, our liability for damages shall be limited to the foreseeable, typically occurring damage. Sub-suppliers shall not be deemed our vicarious agents.
- b. For used articles, all warranty claims are generally excluded unless in the event of wilful deception or a guaranteed characteristics. This limitation of liability does not apply to damages of injury of life, body and health.

**X. Limitation of liability**

- a. Our liability for claims for damages due to breaches of duties or of tortious claims pursuant to Section 823 et seq. of the German Civil Code etc. is limited in accordance with the following provisions.
- b. In the event that our liability should be excluded or limited, same shall also apply to the personal liability of our office employees, factory workforce, staff members, legal representatives and agents.
- c. Liability without fault for the procurement of the object of purchase in case of an indeterminate obligation shall be excluded. Liability will only be assumed in case a fault exists.
- d. Liability for consulting services etc. shall only be assumed if such was given expressly and in writing.
- e. Liability for damages shall be limited to a predictable damage that might typically occur unless the breach of duty was caused intentionally.
- f. Claims for damages in accordance with mandatory provisions of the Product Liability Act shall remain unaffected.
- g. This limitation of liability does not apply to damages of injury of life, body and health or in the event of a guarantee (also in respect of a procurement guarantee).
- h. This limitation of liability shall not apply if any commercial fixed-date transaction has been agreed; the same applies if the business partner can claim that its interest in the fulfilment of the contract has ceased as a result of default for which we are responsible. In any such case, the liability for damages shall be limited to the foreseeable typically occurring damage unless we have deliberately caused the breach of contract.
- i. In the event of a delay in delivery or our inability to deliver the goods, the business partner's claims for compensation are limited to a value of five per cent of the part of the delivery that becomes impossible due to our own fault or that we are in delay with.



- j. Any damages due to the lack of warranted features can only be claimed by the commercial customer warranty if the guarantee was aimed at preventing the damaged that has just occurred.

**XI. Federal Data Protection Act**

- a. We store and process customer data in accordance with the provisions of the Federal Data Protection Act.

**XII. Place of Jurisdiction, Place of Fulfilment, Applicable Law**

- a. If the business partner is an entrepreneur, our place of business shall be the place of jurisdiction; this shall also apply to cheque and bill actions. However, we shall be entitled to file suit against the business partner also at its place of residence.
- b. Contract language is German. This shall also apply to all correspondence, documents and records, technical and maintenance instructions.
- c. Unless not otherwise provided in the order confirmation, our place of business shall be the place of fulfilment.

**As of November 2017**