

## **General Terms and Conditions of Delivery for Entrepreneurs**

### **Article 1 Applicability**

(1) All deliveries, services and offers of Bernhardt & Schulte GmbH & Co. KG, represented by BUS Verwaltungsgesellschaft mbH, established at Oststrasse 20, 58540 Meinerzhagen Phone +49 (0)2354 926-5 / Fax: +49 (0)2354 926-340 / Email: info@drehshalter.de) (hereinafter, the "Seller") are provided exclusively on the basis of these General Terms and Conditions. These are a component of all contracts, which the Seller concludes with its contractual partners (hereinafter also referred to as the "Customer") in relation to the deliveries or services offered by it. They also apply for all future deliveries, services or offers to the Customer, even if they are not expressly agreed again.

(2) Terms and conditions of the Customer or third parties shall not apply, even if the Seller does not separately object to their applicability in the individual case. Even if the Seller refers to a document which contains the business terms and conditions of the Customer or a third party or refers to the same, this shall not constitute agreement to the applicability of those terms and conditions.

### **Article 2 Offer and contract conclusion**

(1) All offers of the Seller are non-binding and without obligation, insofar as these are not expressly marked as binding or contain a specific deadline for acceptance. A contract only comes into existence with confirmation of order by the Seller.

(2) The legal relationships between the Seller and the Customer are solely governed by the sales contract concluded, including these General Terms and Conditions of Delivery. This fully reflects all agreements between the contracting parties relating to the object of the contract. Verbal commitments of the Seller prior to conclusion of the said contract are not legally binding and oral agreements of the contracting parties are replaced by the written contract, unless this expressly provides that they continue to be binding.

(3) Supplements and amendments to agreements made, including to these General Terms and Conditions of Delivery, require the text form to be effective. With the exception of managing directors or authorised signatories, the Seller's employees are not entitled to make oral agreements which deviate from the agreement.

(4) The Seller retains ownership or copyright of all offers and quotations provided by it and of all drawings, images, calculations, prospectuses, catalogues, models, tools and other documents and resources provided to the Customer. The Customer may not make these items, or their contents, accessible to third parties, nor disclose them, exploit them itself or through third parties nor copy them. It must, upon request of the Seller, return these items to the latter in full and destroy any copies made, if they are no longer required by it in the ordinary course of business or if negotiations do not lead to a contract being concluded. This does not apply to the storage of data provided electronically for the purposes of customary data backup.

### **Article 3 Pricing and payment**

(1) Prices apply for the scope of deliveries and services set out in the order confirmation. Additional or special services shall be calculated separately. Prices are in euros ex works plus packaging, statutory VAT, customs duty in the case of exports and fees and other public charges.

(2) Invoiced amounts are payable immediately and within thirty days without deduction, unless otherwise agreed in writing. Payment is deemed to have been made upon its receipt by the Seller. Payment by cheque is excluded, unless separately agreed in the individual case. If the Customer fails to pay by the due date, interest is charged on the outstanding amounts from the due date at the rate of 5% p.a.; the right to assert higher rates of interest and further damages in the event of default remains unaffected.

(3) Offsetting with counterclaims of the Customer or withholding of payments due to such claims is only permitted insofar as the counterclaims are undisputed or have become legally binding or result from the same order, under which the delivery concerned was made.

(4) The Seller is entitled only to perform outstanding deliveries or to provide services against prepayment or security, if, after conclusion of the contract, it becomes aware of circumstances which are apt to considerably diminish the Customer's creditworthiness and by which payment of the Seller's outstanding

receivables by the Customer under the relevant contractual relationship (including under other individual contracts, for which the same Framework Agreement applies) is jeopardised.

### **Article 4 Delivery and delivery period**

(1) Deliveries are made "ex works".

(2) Delivery dates and periods indicated by the Seller are always only approximate, unless a fixed date or period has been expressly promised or agreed. Insofar as shipment has been agreed upon, delivery times and deadlines refer to the point of handover to the forwarder, carrier, or other third party assigned to transport the goods.

(3) The Seller can – without prejudice to its rights with respect to default on the part of the Customer – require from the Customer an extension of the period for delivery or performance of services or postponement of the deadline for delivery or performance of services by the period during which the Customer fails to meet its contractual obligations towards the Seller.

(4) The Seller is not liable for impossibility of delivery or delays in delivery, to the extent that these are caused by force majeure or other events unforeseeable at the time of contract conclusion for which the Seller is not responsible (e.g. operational disruptions of all kinds, difficulties with procuring materials or energy, transportation delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, difficulties with obtaining necessary official permits, administrative measures or no delivery, incorrect delivery or untimely delivery by suppliers). Insofar as such events make delivery or the performance of services significantly more difficult or impossible for the Seller, and the impairment is not merely temporary, the Seller is entitled to withdraw from the contract. For hindrances of a temporary nature, the periods for delivery or performance of services shall extend, or deadlines for delivery or performance of services shall be postponed, by the period of the hindrance plus an appropriate grace period. Where the Customer cannot reasonably accept the delivery or service as a result of the delay, it can withdraw from the contract by immediate written notification to the Seller.

(5) The Seller is only entitled to make partial deliveries, if

- the partial delivery can be used by the Customer within the context of the contractually-agreed purpose,

- the delivery of the remaining goods ordered is ensured and

- no resultant, significant additional expenditure or additional costs accrue to the Customer (except where the Seller notifies its readiness to cover such costs).

(6) Where the Seller enters into default with a delivery or service or if a delivery or service is impossible for it, for any reason whatsoever, the liability of the Seller for damages is limited in accordance with Article 8 of these General Terms and Conditions of Delivery.

### **Article 5 Place of performance, shipping, packaging, transfer of risk, acceptance**

(1) The place of performance for all obligations under this contractual relationship is Meinerzhagen, unless otherwise agreed. If the Seller is also responsible for installation, the place of performance is the place where installation is to be carried out.

(2) The shipping method and packaging are at the discretion of the Seller.

(3) Risk transfers, at the latest, upon handover of the delivery item (whereby the start of the loading process is determinative) to the forwarding agent, carrier or other third party contracted to carry out shipment to the Customer. This also applies where partial deliveries are made or the Seller has assumed other services (e.g. shipment or installation). Where shipping or handover is delayed due to circumstances whose cause lies with the Customer, risk transfers to the Customer on the date on which the delivery item is ready for shipping and the Seller has notified the Customer of this.

(4) The Customer bears storage costs after transfer of risk.

(5) The shipment shall only be insured against theft, breakage, transportation, fire and water damage or other insurable risks upon the express wish of the Customer and at its expense.

(6) Insofar as acceptance needs to take place, the article of sale is deemed accepted, when the

- delivery and, insofar as the Seller is also responsible for installation, the installation, is completed,
- the Seller notifies the Customer of this with reference to the notional acceptance in accordance with Article 5(6) of these GTCs and has invited its acceptance,
- twenty working days have passed since delivery or installation or the Customer has commenced using the purchased item (e.g. the item supplied has been put into operation) and in this case ten working days have passed since delivery or installation and
- the Customer has neglected to provide acceptance within this period for a reason other than a defect notified to the Seller, which makes use of the item purchased impossible or significantly impairs this.

#### **Article 6 Warranty, material defects**

- (1) The warranty period amounts to one year from delivery or, where acceptance is required, from acceptance. This period does not apply for damages claims of the Customer for injury to life, limb or health or for wilful or grossly negligent breach of obligations by the Seller or its agents, which become statute-barred in accordance with statutory provisions.
- (2) The items delivered must be carefully examined immediately upon handover to the Customer or to the third party specified by it. They are considered approved, with respect to obvious defects or other defects which would have been apparent upon immediate, careful investigation, if the Seller does not receive a written complaint of defects within ten working days after handover. With respect to other defects, the delivery items are considered approved, if the Seller does not receive the complaints of defects within ten working days from the date on which the defect appeared; if the defect was already obvious upon normal use at an earlier point in time, however, this earlier point in time is determinative for the beginning of the period for notification of defects. Upon request of the Seller, a contested delivery item must be returned to the Seller, carriage paid. For justified complaints of defects, the Seller shall pay the costs of the least expensive shipping method; this shall not apply, to the extent that the costs increase, because the delivery item is in a place other than the place of intended use.
- (3) For material defects in the delivery items, the Seller is obliged and entitled, at its choice to be made within an appropriate period, to repair them or to supply a replacement. Where this fails, i.e. repair or supplying a replacement is impossible, unreasonable, refused or unduly delayed, the Customer can withdraw from the contract or claim an appropriate reduction of the purchase price.
- (4) Where a defect is due to fault on the part of the Seller, the Customer can require damages under the specific conditions set out at Article 8.
- (5) In the event of defects in components from other manufacturers, which the Seller cannot rectify for licensing reasons or other factual reasons, the Seller shall, at its discretion, assert its warranty claims against the manufacturer and supplier for the Customer's account or assign these claims to the Customer. Warranty claims can only be asserted against the Seller for such defects subject to the other requirements and in accordance with these General Terms and Conditions of Delivery if legal enforcement of the above-mentioned claims against the manufacturer and supplier was unsuccessful or has no prospect of success, for example due to insolvency. Throughout the period of the legal dispute, statute-barring of the Customer's relevant warranty claims against the Seller is suspended.
- (6) The warranty ceases to apply if the Customer alters the delivery item without the consent of the Seller or allows it to be altered by third parties and the rectification of defects is impossible or unreasonably difficult. In any case, the Customer bears the additional costs of rectification of defects caused by the alteration.
- (7) Any delivery of used items agreed in the individual case with the Customer is made excluding any warranty for material defects.

#### **Article 7 Industrial property rights**

- (1) The Seller warrants in accordance with this Article 7, that the delivery item is free from third-party industrial property rights or copyrights. Each contracting party shall immediately inform the other contracting party, if claims are asserted against it for infringement of such rights.
- (2) In the event that the delivery item infringes a third-party industrial property right or copyright, the Seller shall, at its discretion and at its expense, amend or exchange the delivery

item in such a way that third-party rights are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the Customer by concluding a licensing agreement with the third party. If the Seller fails to do this within an appropriate period, the Customer is entitled to withdraw from the contract or to claim an appropriate reduction of the purchase price. Any claims for damages of the Customer are subject to the restrictions of Article 8 of these General Terms and Conditions of Delivery.

(3) In the event of infringements of rights by products from other manufacturers supplied by the Seller, the Seller shall, at its discretion, assert its claims against the manufacturer and upstream suppliers for the Customer's account or assign these claims to the Customer. Claims against the Seller arise in these cases in accordance with this Article 7, only if legal enforcement of the above-mentioned claims against the manufacturer and upstream suppliers was unsuccessful or has no prospects of success, for example, due to insolvency.

#### **Article 8 Liability for damages due to fault**

- (1) The liability of the Seller for damages shall be limited, on any legal grounds, in particular for impossibility, delay, defective or erroneous delivery, breach of contract, breach of obligations in contract negotiations and liability in tort, insofar as there is fault, in accordance with this Article 8.
- (2) The Seller shall not be liable in the event of simple negligence by its institutions, legal representatives, employees or other agents, insofar as there is no breach of fundamental contractual obligations. Fundamental contractual obligations are those of timely delivery and installation of the delivery item, its freedom from defects of title, and material defects, which impair its functional capability or serviceability to a significant extent, and advisory, protective and custodial obligations, which are considered to enable the Customer to use the delivery item in conformity with the contract or obligations or to protect the life or limb of the Customer's personnel or which are intended to protect the Customer's property from significant damage.
- (3) Insofar as the Seller, in accordance with Article 8(2), is liable to pay damages, its liability is limited to damages which the Seller foresaw upon conclusion of the contract as a possible consequence of a breach of contractual obligations, or which it should have foreseen in applying due care. Indirect damages and consequential damages, which are the consequence of defects in the delivery items are, furthermore, only eligible for compensation, insofar as such damages are typically to be expected when the delivery item is used in accordance with its intended purpose.
- (4) In the case of liability for simple negligence, the Seller's obligation to compensate for material damage and resultant further financial losses is limited to an amount of 5,000,000.00 per case of damage, including where there is a breach of fundamental contractual obligations.
- (5) The exclusions and limitations of liability set out above shall apply to the same extent for the Seller's corporate bodies, legal representatives, employees or other agents.
- (6) To the extent that the Seller provides technical information or acts as an advisor and this information or advice is not part of the contractually-agreed scope of services which it is responsible for providing, these services are free of charge with liability excluded.
- (7) The restrictions of this Article 8 shall not apply for the Seller's liability due to gross negligence, for guaranteed characteristics, in relation to injury to life, limb or health or under German product liability law.

#### **Article 9 Retention of title**

We retain title to the delivered goods until complete payment of the purchase price for these goods.

#### **Article 10 Concluding provisions**

(1) Insofar as the Customer is a merchant, a legal entity under public law or special fund under public law or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any and all disputes arising from the business relationship between the Seller and the Customer, at its discretion, is Meinerzhagen or the registered office of the Customer. For claims against the Seller, in such cases, however, Meinerzhagen is the exclusive place of jurisdiction. Mandatory statutory provisions concerning the exclusive place of jurisdiction remain unaffected by this provision.

(2) Relations between the Seller and the Customer are governed exclusively by the law of the Federal Republic of Germany and shall be interpreted in accordance with German legal understanding. The United Nations Convention on the International Sale of Goods of 11 April 1980 (CISG) shall not apply. The attached English/French version serves information purposes only and is not a component of the legal transaction. In the event of discrepancies between the German and the English/French versions, only the German version shall apply.

(3) To the extent that the contract or these General Terms and Conditions of Delivery contain loopholes, the loopholes shall be remedied with legally-effective provisions, which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery, if they had known of these loopholes.