

## **General Terms and Conditions of Sale**

### **§ 1 General**

(1) The terms and conditions set out below shall form part of the agreement concluded with us.

(2) Our General Terms and Conditions of Sale exclusively are applicable to all our (that means the b-plus GmbH, Ulrichsberger Straße 17, 94469 Deggendorf and all of its affiliated companies according to §§ 15 ff. German Stock Corporation Act (Aktiengesetz)) business relations which we enter for the first time, regularly and in future with companies pursuant to section 14 German Civil Code (hereinafter referred to as Purchaser); they shall apply in accordance with the most recent version and to all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such transaction.

(3) We hereby object to any counter confirmation, counter offer or other reference by the Purchaser to its general terms and conditions; any dissenting terms and conditions of the Purchaser shall only apply if we have confirmed the same in writing.

(4) The Purchaser may not assign any claims arising from transactions with us without our written approval.

### **§ 2 Offers / Quotations; Orders**

(1) Unless expressly specified as binding, all of our offers and quotations are subject to confirmation at all times, in particular as regards quantity, price and time of delivery.

(2) Despatching our price list(s) to a customer will not be deemed an offer or quotation. The technical data, the information regarding intended use and the product illustrations contained in our advertising and/or in our brochures and other sales material do not constitute an offer to conclude a guarantee agreement in the sense of section 443 of the German Civil Code (§443 BGB).

(3) Ordering a good or a service constitutes the binding offer on the part of the contractual partner to intend to acquire the good or service. Within two weeks of receipt of an order, we are entitled to accept the offer of contract contained in that order. Acceptance of an offer can be made by us in writing or in the form of delivery of the ordered goods / carrying out the ordered service to/for the ordering party. Without giving any written explanation or grounds, we reserve the right not to accept orders. In case of doubt, an absence of reaction on our part after expiration of the time limit for acceptance shall be deemed a rejection.

(4). If an order is placed electronically we will confirm receipt of the order immediately. Confirmation of receipt is not to be considered binding acceptance of an order; however, we can combine the confirmation of receipt with the note of acceptance.

### **§ 3 Prices**

(1) As a rule, our prices are quoted in EURO net cash, ex works / ex warehouse in Deggendorf, plus despatch and packaging costs and transportation insurance, unless anything else has been agreed upon in writing. Legally stipulated charges, customs duties and taxes are to be paid separately and will be at the valid rate on the date of invoicing.

(2) Our prices are valid for 30 days from the date of conclusion of contract.

(3) Price changes are permissible if a period of more than 30 days lies between conclusion of contract and the agreed delivery date. So, if wages, material costs or the market cost prices (list prices) increase before completion of delivery, then we are entitled to increase the price reasonably, commensurate with the increased costs.

### **§ 4 Quantity; Quality**

(1) At all times, we shall have the right to supply 5% more or less than the agreed amount.

(2) Unless otherwise agreed or confirmed by us in writing, the quality of the goods shall be in accordance with customary trade practice.

## **§ 5 Default in Acceptance**

(1) If the purchaser defaults on acceptance, or if he violates any other duty to cooperate, then we are entitled, without prejudice to our rights according to clause 6, paragraphs 5 and 6, to choose to withdraw from the contract and to claim reimbursement of damages, including any additional expenses.

(2) In the event of default in acceptance, the risk of accidental loss or accidental deterioration of the delivered items is passed to the purchaser at that point in time as the purchaser falls into default of acceptance.

## **§ 6 Delivery**

(1) Our delivery shall take place ex work (EXW Incoterms 2000), unless anything else has been agreed upon in writing. The time at which the risk of damage or loss of the goods shall pass shall be fixed in accordance with the interpretation of Trade Terms of the International Chamber of Commerce of Paris (Incoterms 2000).

(2) We shall have the right to reasonable delivery in installments.

(3) In the case of call delivery orders, the full ordered quantity shall be deemed called off by the contractual partner one calendar month after expiration of the agreed call-off time period, or, if a time period has not been agreed upon, then three calendar months after conclusion of the contract.

(4) If the purchaser is entitled to classify call-off quotas, and he does not carry out such classification within one calendar month after expiration of the relevant agreed call-off time period, or, if such a time period has not been agreed upon, within one month after being requested to do so by us, then we are entitled to classify, deliver and calculate the total ordered quantity at our discretion.

(5) Our delivery obligation shall at all times be subject to timely and orderly receipt of the goods from our own suppliers.

(6) Unless otherwise expressly agreed in writing, any indicated time of delivery or unloading shall be non-binding.

(7) Any inability to supply as a result of *force majeure* or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities and our reservation of timely supply from our own supplies in accordance with subsection (5) above shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed time for delivery and unloading.

(8) If any agreed time of delivery or unloading shall be exceeded and there shall be no incident referred to in subsection (7) above, then the Purchaser must specify to us a reasonable cure period of minimum two weeks. If we shall fail to meet such deadline also, then the Purchaser shall have the right to rescind the agreement but shall have no right to seek compensation for breach of contract or default unless in cases of willful misconduct or gross negligence on our part.

## **§ 7 Duty to Inspection and Objection**

(1) Upon delivery at the agreed destination or (in the event of self supply) upon taking possession, the Purchaser shall immediately

a) check quantities, weight and packaging and record any objections thereto on the delivery note or consignment note. Quantity discrepancies below 5 % on bulk commodities do not create entitlement to notify defects

b) conduct a quality check representatively on a spot check basis .

(2) In case of a notice of defect the Purchaser shall comply with the following procedures and deadlines:

a) The notification shall be made by no later than the expiry of the second working day on which the delivery of the goods to the agreed destination or on which possession of the goods has been taken. In the event of an objection to a hidden defect which, despite a first inspection in accordance with subsection (1) above, has remained undiscovered a different deadline regime shall apply. In such case the objection must be raised within the earlier of the expiry of the second working day on which the defect has been discovered but in any event by no later than two weeks after delivery or take over of the goods.

b) The detailed notice shall be delivered to us within the aforementioned deadlines in writing or by fax. Any notice by telephone conversation shall not be accepted. Any notice to sales representatives, commission agents or agents shall not be valid.

c) The notice must clearly specify the kind and amount of the alleged defect.

d) The Purchaser agrees to make available for inspection the objected goods at the place of inspection; such inspection may be done by us, our suppliers or any expert we may have designated

(3) No objections with regard to quantities, weight or packaging of the goods shall be possible unless a note has been placed on the delivery note or a consignment note or a receipt of acknowledgement in accordance with subparagraph (1) (a) above. Moreover, right to object shall cease to exist, when the Purchaser has mixed, used or resold the goods delivered or shall have started its processing.

(4) Any good to which objections shall not have been raised in accordance with the procedures and deadlines set out above shall be regarded as approved and accepted.

## **§ 8 Warranty**

(1) Subject to correct notification of defects in accordance with clause 7, paragraph 2, we accept a guarantee under the following conditions:

a) In the event of defect of the goods we are entitled to either remedy the defect first of all and thus fulfil the contract at a later date, or we can deliver a substitute free of defects.

b) If subsequent fulfilment of contractual duties is unsuccessful and the purchaser chooses to withdraw from the contract due to defect of title or quality, then he is not entitled to also claim damages on the grounds of the defect.

c) If subsequent fulfilment of contractual duties is unsuccessful and the purchaser chooses to claim damages, then our liability does not cover any damage which has not occurred on the actual delivered item; liability for lost profits or other economic loss is ruled out.

(2) The warranty period for defects of title or quality is one year.

(3) Basically only our product description or the one of the manufacturer is understood to represent the product quality. Public comments, recommendations or advertising made by us or the manufacturer do not represent a contractual statement on the quality of the product.

(4) The Purchaser does not receive guarantees in the legal sense from us. Manufacturers' warranties shall remain unaffected by this.

## **§ 9 Liability**

We will not assume liability for a slight degree of negligent violation of immaterial contractual duties. For the rest, in the event of a slight degree of negligent violation of duties, our liability will be restricted to immediate standard damage which is foreseeable in goods of that kind and typical of the contract. This provision also applies in the case of a slight degree of negligent violation of duty on the part of our legal representatives, executives and vicarious agents.

## **§ 10 Payment**

(1) Our purchase price claims are net cash amounts and payable free of any deduction 30 days upon date of the invoice unless other payment terms shall have been agreed in writing

(2) We shall accept promissory notes and cheques only upon specific arrangement and only on account of payment. Any fees for discount bills or promissory notes shall be at the expense of the buyer and immediately payable.

(3) If the invoice amount shall not have been settled within 30 calendar days after the date of invoice or after an other due date which has been agreed upon in writing, then we shall without the need to a separate warning notice have the right to recover default interest in a proven amount but in any event an amount equaling 8 percentage points above the base rate of the European Central Bank.

(4) If the Purchaser's business shall be operated beyond the ordinary course of business which shall include, without limitation, acts of seizure or a situation where a protest in relation to promissory notes or cheques has been made, payments shall be delayed or even discontinued or judicial or out of court settlement or insolvency proceedings shall have been petitioned or opened or proceedings in accordance with the German Insolvency Act shall have been petitioned, then we shall have the right to declare all our claims arising from the business relationship as immediately payable, even if we shall have accepted promissory notes or cheques. The same shall apply if the Purchaser shall be in payment default towards us or other incidents shall surface which give rise to doubts about its creditworthiness. Moreover, we may in such event demand prepayments or a security deposit or rescind the agreement.

(5) The Purchaser shall have no right to set off, retention or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by us.

#### **§ 11 Retention of Title**

All goods delivered by us shall remain our property until the purchase price has been paid in full (including any transport costs). The purchaser is, however, entitled to treat, process, and / or to resell the goods in the course of regular business procedure. Treating and processing of the goods by the purchaser, shall be in our name at all times and on our behalf. Any accounts receivable that are based on such handling of the goods are hereby assigned to us by the purchaser to the amount of our invoiced claim, including the legal value-added tax. We accept the assignment. The purchaser shall remain entitled to collect these claims. Our entitlement to collect debts shall remain unaffected by this. We hereby undertake, however, not to collect the debt as long as the purchaser is not in default of payment of the purchase price. If the seller fails to pay the purchase price on the due date, then he forfeits his entitlement to process, install and / or to resell the reserved goods.

#### **§ 12 Empties**

The Purchaser agrees to return to us empties (Euro-Boxes, pallets, Euro-Hooks etc.) of the same type, amount and value that it shall have received for the purposes of delivery. All empties shall be returned in a clean state in accordance with applicable hygiene laws. If the Purchaser shall be unable to return the same at the delivery of our goods, then he shall immediately ensure a settlement of the account of empties (duty to deliver). If the Purchaser shall be in default of the duty to settle the account of empties, then we may, if a reasonable cure period shall have been specified, refuse the acceptance and demand compensation from the Purchaser.

#### **§ 13 Applicable Law**

The legal relationship between the parties is governed by the Law of the Federal Republic of Germany. International purchase laws shall not apply. This shall, in particular, refer to the UN Convention (CISG) on the International Sale of Goods. Where standard terms at business are used, the INCOTERMS 2000 of the International Chamber of Commerce shall apply.

#### **§ 14 Place of Performance; Place of Jurisdiction**

Place of performance for all services rendered is our registered office in Deggendorf; for merchants pursuant to § 1 German Commercial Code (HGB) the Landgericht Deggendorf (Deggendorf District Court) has jurisdiction.

#### **§ 15 Final Provisions**

The invalidity of any provision of these general terms and conditions of sale shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible. In the event of discrepancies or discrepancies in the interpretation the German version shall prevail.