

### 1. Applicability of the terms

- 1.1. These General Terms and Conditions (GTC) shall exclusively apply to business relationships with entrepreneurs in terms of § 14 BGB (German Civil Code), corporate bodies under public law and separate estates under public law. They shall not apply to contracts with consumers in terms of § 13 BGB.
- 1.2. Our deliveries and services – including consulting – shall be undertaken, unless otherwise agreed, exclusively based on these GTC. These shall also always apply to our future deliveries and services to the customer.
- 1.3. We disallow opposing terms or terms of the customer deviating from our GTC, unless we expressly consented to their applicability. Our GTC shall also apply, if we, aware of opposing terms or terms of the customer deviating from our GTC, undertake the delivery or service, resp., without reservation.

### 2. Offer and conclusion of contract

- 2.1. Our offers shall be – unless expressly agreed otherwise – non-binding. Contracts as well as their amendments and additions shall only be deemed concluded, when our written confirmation is present or when our delivery/service was rendered without reservation.
- 2.2. Information on our products and services on the Internet, in brochures or price lists shall not represent an offer binding us

### 3. Prices

- 3.1. The prices agreed shall apply. Furthermore, calculation shall be undertaken according to our price lists respectively valid on the date of delivery/service. The basis for our prices shall be the price-determining factors given upon conclusion of the contract (e.g., wage agreements, raw materials or energy costs, costs for auxiliary and operating materials). In case of an increase in the price-determining factors, which cannot be compensated with cost savings, we reserve a respective price adjustment for deliveries, which shall be undertaken 2 months after the conclusion of contract, at the earliest. The amount of the price adjustment must be justified by the change in the price-determining factors and must be indicated to the customer within a reasonable period of time. If fixed prices were agreed, this shall only apply, if the changes occurred unforeseeable for us after conclusion of contract.
- 3.2. All prices shall be understood plus the respectively valid value-added tax and, unless agreed otherwise, ex works.
- 3.3. If delivery free domicile or on site was agreed, then the price shall include delivery in vehicles of our choice as well as unloading in one place only. We shall be entitled to pass on increases in freight costs to the customer. The delivery of reduced quantities, the use of temperature-controlled or other special vehicles or the unloading of partial quantities in various places, resp., shall require a separate contractual agreement and must be additionally compensated by the customer. Costs for waiting/unloading times of max. 60 minutes shall be included in the agreed price. For idle times exceeding this, the customer will be charged separately.
- 3.4. Should delivery be undertaken on pallets, then the customer shall be obliged to hand over empty pallets of the same quantity, type, and quality in exchangeable condition to the deliverer of the goods. The handing-over of pallets must be acknowledged by the deliverer on the delivery documents. The customer shall be charged for pallets not exchanged.

### 4. Determination of weights and quantities

- 4.1. We shall invoice on the basis of the weight determined at our supply plant.
- 4.2. Upon sale by number of items, cubic metres, square metres or linear metres, the quantity determined upon loading shall be deemed decisive for invoicing.

### 5. Delivery / Service / Passage of risk

- 5.1. Our delivery shall, unless agreed otherwise, always be undertaken ex supply plant/warehouse. The risk shall pass to the customer as soon as the delivery is handed over to the person executing the transport. If the shipment becomes impossible or delayed through no fault on our part, then the risk shall pass to the customer with the notification of readiness for shipment.
- 5.2. Upon delivery free domicile/on site, the unloading place must be well reachable for the vehicles. If access to the unloading place should be impossible or unacceptable for whichever reasons, then unloading shall be undertaken in that place, up to which the vehicle can get unhindered.
- 5.3. Returnable containers and returnable packaging must be sent back to us by the customer completely empty and carriage paid within 60 days. Loss and damages shall be paid by the customer. Returnable containers/package must not be used of other purposes or for filling with other products. They shall be exclusively intended for the transport of our delivered goods. Labelling must not be removed.

### 6. Payment

- 6.1. Payments shall become due immediately upon delivery/a service being rendered. The customer shall fall into arrears, if he/she does not pay within 30 days after the due date and invoicing (decisive shall be the date of invoice). Should we arrange an advance on current account at an interest rate, which is higher than the interest on arrears resulting according to the provisions of the BGB, then we shall be entitled to calculate the interest rate corresponding to the interest on current account.
- 6.2. Cheques shall only be accepted following special agreement and on account of payment, calculating all collection expenses and discount charges as well as other resulting fees.
- 6.3. Should costs and interests have arisen already, then we shall be entitled to allocate the payment first to the costs, then to the interests, and last to the main service. We shall be entitled, despite provisions of the customer to the contrary, to first allocate payments to his/her older debts.
- 6.4. In case of cheques, payment shall only be deemed undertaken, once the cheque is cashed or the bill is honoured, resp., and there is no chargeback by the redeeming bank.
- 6.5. In case of delayed payment of the customer, or should we become aware of other circumstances, which raise doubt on the creditworthiness

Last updated: March 2021 - Page 1 of 3

of the customer, we can revoke allowed times for payment or deferments at any time. In addition, we can declare any further demands from our business relationship with the customer due immediately. Circumstances, which raise doubt on the creditworthiness of the customer, shall include, e.g., protested direct debits, non-redemption or chargeback of a cheque, pursuing of extrajudicial conciliation proceedings, cessation of payment, filing for insolvency against the assets of the customer or justified indications for over-indebtedness or impending insolvency of the customer.

- 6.6. Under the pre-requisites of Clause 6.5., we shall also be entitled to hinge any deliveries/services to the customer on advance payments and/or the provision of securities and/or to cease the fulfilment of all existing delivery/service obligations – also such one, for which there is no delayed payment – for the time being. Furthermore, we shall be entitled to demand compensation and/or to withdraw from contracts for deliveries/services to the customer following expiry of a reasonable extension without any result.
- 6.7. Rights of set-off and retention of the customer shall only be admissible with own legally established, acknowledged, or undisputed claims.

### 7. Times of delivery and service / Material returns

- 7.1. The dates and deadlines stated by us shall be non-binding.
- 7.2. Only 24 hours after exceeding of a non-binding date of delivery/service or a non-binding delivery/service deadline, the customer may request us in writing to deliver/render a service within an appropriate period of time. With this reminder, we shall enter into default.
- 7.3. In case of default, the customer shall only be entitled to withdrawal, when he/she sets a reasonable grace period in writing, indicating, that he/she would reject acceptance of the subject matter of the contract after expiry of the deadline and the deadline expired without success. The withdrawal must be in writing.
- 7.4. We shall not be responsible for delays in delivery and service due to force majeure and due to events, which make it significantly more difficult or impossible for us to undertake the delivery/service – these shall also include subsequently occurred difficulties in materials procurement, operational disturbances, strike, lockout, lack of raw materials or energy, lack of personnel, lack of means of transport, official orders, etc., also if they occur at our subcontractors or their subcontractors, also in case of bindingly agreed deadlines and dates. In case of delays in terms of Para. 1, we shall be entitled to postpone the delivery or service, resp., by the duration of the hindrance, plus a reasonable lead time, or to completely or partially withdraw from the contract for the part not undertaken yet. Should the hindrance last longer than 10 days, then the customer shall be entitled to withdraw from the contract according to Clause 7.3 with regard to the part not fulfilled yet.
- 7.5. Claims for damages of the customer shall be determined according to Clause 9 of these GTC in conjunction with the legal provisions.
- 7.6. We shall be entitled to partial deliveries and partial services anytime.
- 7.7. The return of defect-free goods delivered by us shall be excluded. Should we, by way of exception, agree to the return, then crediting for the goods taken back shall only take place insofar as our laboratory determines their unrestricted reusability. For the costs of examination, processing, reworking and new packaging, the actual costs, at least, however, 20 % of the amount invoiced for the respective goods, or – if the amount determined this way should be lower – at least, however, € 30.00 will be deducted. The credit will not be paid out, but shall serve for offsetting with future deliveries only. Should the laboratory tests not confirm unrestricted reusability, then we shall be entitled to charge the customer with the costs for the laboratory testing as well as for proper disposal of the goods to the full amount.

### 8. Quality / Rights in case of defects

- 8.1. The quality of our goods corresponds with the information given in our German-language technical datasheets valid at the time of contract conclusion and retrievable under [www.bornit.de/de](http://www.bornit.de/de). The information shall be deemed approximate and shall always serve as a yardstick for the determination, whether the subject matter of the contract is free from defects, wherein tolerance regulations included in the sets of rules must be applied. It is known to the customer that the goods sold by us have different shelf lives and areas of application. The risk of suitability and application shall be exclusively incumbent on the customer.
- 8.2. The customer must immediately notify us about defects in writing, indicating the order and batch numbers. The same shall apply to other complaints of whichever kind. The customer must immediately inform us about intended sampling at the construction site and give us the opportunity to participate in time.
- 8.3. In case of defective delivery, we shall provide replacement and compensate reasonable expenses required for the purpose of supplementary performance (including removal and installation costs) pursuant to the legal provisions, if and as far as the damage was not caused by other circumstances (e.g., errors in installation and/or planning).
- 8.4. The legal deadlines shall apply to the assertion of claims for defects. Should the term of liability for defects of the customer in the relationship to his/her client, however, end earlier than the legal deadline valid for our contractual relationship to the customer, then our liability for defects shall end 1 month after expiry of the deadline valid in the relationship of the customer to his/her client. The deadlines shall start with the respective date of delivery/service.
- 8.5. Technical specifications and standards applicable abroad, which deviate from our technical datasheets or safety datasheets, resp., shall only be deemed agreed in the relationship between the customer and us, when this was agreed in writing between the customer and us. Should such an agreement not be present, then we shall not be liable for the goods delivered complying with these specifications/standards. Should there, nevertheless, be third-party claims because of the quality of our goods against us – no matter for which legal reason –, then the seller shall be obliged to completely indemnify us from these, unless the claims are due to the fact that the goods do not comply with the quality contractually agreed between the buyer and us.

### 9. Liability / Damages

- 9.1. In case of claims for damages of the customer according to the Product Liability Act, according to Art. 82 DSGVO, for injury to life, body, or health, for fraudulent concealment of defects or for assumption of a guarantee for the quality of the item delivered, we shall be liable according to the legal provisions. In case of infringement of essential contractual obligations, we shall be liable for intent and gross negligence according to the legal provisions. Apart from that – as far as the claims for damages of the customer do not fall under Paras. 1 and 2 – our liability shall be limited to the contract-typical damage foreseeable upon conclusion of contract.
- 9.2. As far as nothing else results from Clause 9.1., the liability for consequential damages shall be excluded.

Last updated: March 2021 - Page 2 of 3

### 10. Comprehensive reservation of title

- 10.1. The goods delivered by us (reserved goods) shall remain our property until fulfilment of any and all claims we are entitled to from the business relationship towards the customer. The customer shall be entitled to process and sell the reserved goods in proper business transactions. It is not a proper business transaction, if, in case of sales of the customer or in case of his/her other orders or actions in favour of third parties, the assignability of his/her claims to third parties is excluded. Pledges or assignments as security of the reserved goods shall be inadmissible.
- 10.2. Processing or transformation shall always be undertaken for us as the manufacturer, however, without obligation for us. The processed goods shall likewise be deemed reserved goods. In case of connection or mixing of the reserved goods with other mobile objects, to the effect that they become essential components of a uniform object, we shall become co-owners in this object; our share shall be determined by the value ratio of the objects at the time of connection or mixing. If, however, the reserved goods have to be considered as the main object, then we shall obtain sole ownership. In case of connection of the reserved goods with a structure, a claim of the customer for the grant of a recordable security interest of the building contractor in the building plot of his/her orderer to the amount of the part, which corresponds to the value of the reserved goods, shall be assigned to us.
- 10.3. Claims resulting from the resale/further processing or another legal reason with regard to the reserved goods shall already be assigned to us by the customer as a security to the amount of the purchase price of the reserved goods. The customer shall be authorised to collect these claims for us. The authorisation to collect shall become ineffective, should the customer not properly fulfil his/her payment obligations towards us. In this case, we shall be entitled to disclose the assignments to the third-party debtors.
- 10.4. In case of deliveries in construction projects, for which, in the relationship between the customer and the client, partial assignment is only allowed after previous consent of the client, this, however, is not present, or partial assignment is excluded in general, the following shall apply deviating from Clause 10.3.: the assignment, regardless of the amount of the purchase price of the reserved goods, shall refer to the entire claims the customer is entitled to from the construction project, for the fulfilment of which the customer disposed of the reserved goods. Payments of the third-party debtor to us shall be immediately transferred to the customer, as soon as our claim to payment of the purchase price as well as possible accessory claims were paid.
- 10.5. Should the value of the securities granted to us exceed our claims by at least 50 %, then we shall, at the customer's demand and at our discretion, release securities we are entitled to to the extent as they exceed the value of 110 % of our claims.
- 10.6. The customer shall be obliged to provide us, immediately and at his/her cost, with the information required for the assertion of our claims and other claims, and to hand over the documents of proof, as far as they are in his/her possession. The obligation shall correspondingly exist in case of a foreclosure on objects, claims and other rights to assets belonging to us. The customer must immediately inform us about the foreclosure. Additionally, he/she will point out our rights to the attaching creditor in writing. Beside the above obligations to provide information and present documents of proof, the customer shall be obliged to indicate the assignment to the third-party debtors together with us in writing.

### 11. Group invoicing clause

We shall be entitled to offset all claims – no matter which kind – with any and all claims of the customer, which he/she shall be entitled to from us and from companies associated with us in terms of the Companies Act, also in case of various due dates of the claims, as far as it is known to the customer that the respective company is an associated company.

### 12. Other provisions

- 12.1. Information about personal data processed by us within the scope of contract performance can be retrieved from our data protection notice.
- 12.2. As far as legally admissible, all legal disputes directly or indirectly resulting from the contractual relationship shall be brought before the court, which is competent for our registered office. We shall also be entitled to take legal action at the registered office of the customer.
- 12.3. The laws of the Federal Republic of Germany shall apply to these terms and conditions and the entire legal relationship between us and the customer, excluding the UN Convention on Contracts for the International Sale of Goods.
- 12.4. Should a provision in these terms and conditions or a provision within the scope of other agreements be or become ineffective, then this shall not affect the effectiveness of all other provisions or agreements.

Information on the settlement of consumer disputes according to § 36 VSBG (Consumer Dispute Settlement Act):

We do not participate in dispute settlement proceedings before a consumer arbitration board in terms of the Consumer Dispute Settlement Act and are also not obliged to do so.