

General conditions of sale, delivery and payment

1. General, applicability

- (1) Unless otherwise agreed in writing, the conditions set out below shall apply exclusively to all of our deliveries and services (including future deliveries and services). The buyer acknowledges these conditions when a contract is agreed, and at the latest upon acceptance of the goods. These conditions take precedence over any conflicting purchasing conditions or other general contractual conditions of the buyer.
- (2) Ancillary agreements, amendments and supplements must be made in writing to be effective; this also applies to the written form provision.
- (3) Our general conditions of sale, delivery and payment shall not apply in business transactions with consumers (individuals concluding a legal transaction for a purpose unconnected with their commercial or freelance vocational activity).

2. Conclusion of contract, prices

Contracts are accepted upon confirmation in writing by ourselves or upon performance. Our invoice constitutes written acceptance. Invitations to submit quotations are without obligation. Our prices are quoted ex store, exclusive of transport packaging and VAT.

3. Delivery, transfer of risk

- (1) Delivery dates and periods are only binding on us where expressly confirmed in writing by ourselves as fixed delivery times. Delivery periods start when a contract is concluded.
- (2) Deliveries to commercial buyers shall be subject to correct and punctual supply to ourselves.
- (3) In the event of force majeure, industrial action, disruption to operations outside of our control, unrest, governmental measures or other unforeseeable and exceptional events affecting us or our suppliers for which we are not responsible, of which we undertake to notify the buyer wherever possible, we shall be entitled to extend delivery dates and periods as appropriate. Where fulfilment of the contract is thereby rendered unfeasible for one of the parties, that party shall be entitled to rescind the contract.
- (4) Where delivery is delayed on account of reasons for which we or our employees or subcontractors ("Erfüllungsgehilfen") are responsible, we shall be liable to render compensation only under the preconditions stated in section 8.
- (5) Where binding delivery dates or periods are exceeded, the buyer shall be entitled to rescind the contract only after the expiry of a grace period of at least three weeks to be set by the buyer, unless in specific cases we acknowledged a particular need for urgency at the time of concluding the contract. In such a case, the buyer must nominate a delivery deadline appropriate to the specific circumstances. We shall be entitled to make partial deliveries, provided partial fulfilment of the contract is acceptable to the buyer.
- (6) Delivery is performed for the account and risk of the buyer. Where the goods are ready for despatch and the buyer fails to collect the goods despite notification of their readiness for delivery, risk shall transfer to the buyer five days after receipt of the notification.

4. Payment, right of set-off and right of retention

- (1) Our invoices are due immediately, and have to be paid at the latest within 30 days of the invoice date. Where payment is received within 14 days of the invoice date, and provided all amounts due are settled, a prompt payment discount of 2% shall be granted. We explicitly reserve the right to refuse cheques and bills of exchange; these are accepted only on account of payment and with no guarantee of prompt presentation or protest. Charges relating to discounts and bills of exchange are born by the buyer and payable immediately.
- (2) If the legal conditions are met, interest at the statutory rate shall be payable. The right to impose higher charges is reserved. In the event that following conclusion of a contract, it becomes recognisable that our entitlement is at risk due to the buyer's inability to pay, the consequences shall be as follows: all accounts receivable on our part, even where deferment has been granted and irrespective of any bill of exchange received, become payable without delay; we shall be entitled – irrespective of any other compensation claims – to rescind the contract where the buyer fails, after an appropriate request being made, at their discretion either to settle the purchase price or furnish security in respect of the purchase price within seven days.
- (3) The buyer may only set off undisputed or legally established claims. The buyer may only assert a right of retention where the underlying claim is based on the same legal relationship as our claim.

5. Retention of title and advance assignment

- (1) We retain ownership of products supplied until such time as the buyer has settled in full all claims arising from the business relationship.
- (2) Manipulation or processing of reserved goods by the buyer is always carried out on our account, with no obligations on us arising as a result. We are entitled to ownership of the new articles in their respective manipulated or processed state. Where the reserved goods are manipulated, processed, blended, mixed or otherwise combined with other products not owned by us, we shall be entitled to joint ownership of the new article (at a ratio of the invoice price of the reserved goods to the invoice price of the other products). The buyer hereby transfers to us in advance co-ownership in respect of the instances outlined in the previous sentence, to the amount of the invoice price of the reserved goods.
- (3) The buyer is entitled to sell reserved goods under our sole or joint ownership through normal business transactions; the buyer is not entitled to pledge or assign as security. The buyer hereby assigns to us in advance all claims arising in connection with the resale of the reserved goods or the products created by means of manipulation, processing, blending, mixing or combination. This shall also apply where the products are sold at a total price together with other products not under our ownership. Where, as a result of manipulation, processing, blending, mixing or combination, a third party obtains ownership or co-ownership of the product under a statutory provision, the buyer shall similarly at this point and in advance assign to us all entitlements arising in respect of the third party. In all cases, assignments as described in this paragraph shall be limited to the amount of the invoice price of the reserved goods. The customer is entitled to collect the assigned claims until revocation (permissible at any time).
- (4) The customer must ensure the reserved goods are insured against general risks. The customer hereby assigns to us in advance all compensation claims against his insurer in connection with loss of or damage to the reserved goods.
- (5) We hereby accept the assignments of the customer as envisaged in this section.
- (6) At our discretion, we shall release the securities due to ourselves under these provisions at the request of the customer insofar as their value exceeds the collateralised claims by more than 10%.
- (7) Where retention of title requires the cooperation of the buyer to be effective (for example, in the case of registrations required under the law of the purchasing country), the buyer shall be obliged to perform such actions at our request.
- (8) Where the buyer defaults on a payment, we shall at our discretion be entitled to prohibit disposal of the reserved goods in full or in part (for example, permitting only sale, further processing, etc.).
- (9) Where the buyer is objectively compelled to file for insolvency, the buyer, without any request or demand being issued, must relinquish all disposals of the reserved goods of whatever nature. Without delay, the buyer must notify us of the inventory of reserved goods. Moreover, in this event we shall be entitled to rescind the contract and demand the return of the reserved goods. Where the reserved goods were manipulated, processed, blended, mixed or otherwise combined with other products, we shall be entitled to demand the handover of the goods to a receiver; the buyer shall be obliged to disclose all co-owners of the reserved goods, providing details of companies, names, addresses and co-ownership shares. The same applies correspondingly in respect of claims assigned to us in accordance with the preceding paragraphs; in addition, without any request being made, the buyer must provide us with the names and addresses of all debtors as well as documents verifying claims against them.

6. Notice of defects

Commercial buyers must inspect the goods immediately upon receipt (i.e. prior to installation in all cases) and submit complaints concerning quantities and other defects in writing within 10 days of receipt of the goods (and within the same period of establishing the defect in the case of concealed defects); otherwise, the goods shall be deemed to have been approved. It is essential that we receive the notice of defects within the aforementioned period.

7. Warranty/liability for material defects

- (1) The warranty period is one year from receipt of goods. The statute of limitation for delivery recourse claims according to sections 478 and 479 of the German Civil Code remains unaffected. Compensation claims arising from injury to life, limb or health caused by defects or asserted under the product liability law are not limited by these regulations. Similarly, these regulations place no limitation on other compensation claims under warranty law in cases of gross negligence, intent or violation of a substantive contractual obligation on our part (for the definition of substantive contractual obligations, refer to the provisions of section 8).
- (2) In cases of defectiveness and where the requirement to give notice of defects immediately on receipt of goods is observed, the buyer may initially assert a claim for supplementary performance in the form of, at our discretion, replacement or rectification of the fault. This places no limitations on rights of the buyer arising on the basis of legal direction in the case of consumer goods purchases. All other rights of the buyer accord with the law.

8. General liability

- (1) Compensation claims of whatever nature against us and our legal representatives and employees and subcontractors ("Erfüllungsgehilfen") are excluded except in instances of intent, gross negligence or violation of a substantive contractual obligation. In this context, a substantive contractual obligation means any obligation upon fulfilment of which proper performance of the contract depends and on compliance with which the buyer may consistently rely. Our liability shall be limited to the foreseeable damage, typical to the contract, except in cases of intent. The aforementioned limitations of liability and exemptions from liability do not apply to liability under the product liability law or cases of injury to life, limb or health.
- (2) The buyer shall be obliged to minimise damage. In particular, the buyer must seek to ensure cost efficiency where engaging third-party services in connection with a damage event. Where damage is covered by insurance taken out by the buyer in respect of the relevant damage event, the seller shall only be liable for any residual disadvantage to the buyer despite this, e.g. increased insurance premiums or interest disadvantages until settlement through the insurance.

9. Returns

- (1) We are not obliged to take back any goods ordered and properly delivered which are free of defects unless, in specific cases, we have indicated in writing our consent to do so.
- (2) Where such consent has been indicated, the ordering party shall be responsible for the cost of the return shipment. The ordering party must accept a flat charge of 20% of the net purchasing price (and at least €2.50 per item) to cover restocking/goods return costs. This shall not affect our right in specific cases to make returns dependent on the payment of higher costs incurred with us.
- (3) Transport packaging and all other types of packaging cannot be returned, with the exception of reusable pallets and Euro Pool mesh containers. The ordering party is obliged to dispose of packaging at their own expense.

10. Place of performance, applicable law and jurisdiction

- (1) The place of performance for deliveries and payments is Hamburg.
- (2) German law shall apply exclusively, excluding the law of conflicts and the United Nations Convention on Contracts for the International Sale of Goods.
- (3) The exclusive place of jurisdiction for all disputes in connection with the business relationship, including all claims arising from cheques and bills of exchange, shall be Hamburg, insofar as the buyer is a merchant, legal entity under public law or special fund under public law or this party has no place of general jurisdiction in Germany. In the case of disputes arising from or in connection with the contract as concluded, the claimant shall be entitled to refer the matter to the tribunal of the German Institution of Arbitration (DIS) instead of the ordinary courts. In this case, the tribunal convened shall be exclusively responsible for ruling on the legal dispute. The place of arbitration and place of proceedings is Hamburg. Where another city in Germany is more easily accessible for the buyer, the buyer may, within a preclusive period of two weeks from serving the action, request that sessions are held there, if he does not have his registered office in Germany.

BWD Automotive GmbH, Hamburg
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