

General Sales and Delivery Conditions CARL BECHEM GMBH

§ 1 Area of application

The following General Sales and Delivery Conditions apply for all business transactions with our customers or other purchasers (hereafter referred to jointly as "customers" or "purchasers"), even if they are not referred to specifically in other contracts. The application of general purchasing conditions or other general terms of business of the customer is hereby expressly excluded. This also applies if the customer makes reference to his own terms of business, especially when placing or confirming the order, unless we have given our express consent to such terms.

§ 2 Orders

- (1) Our quotations are given without commitment. An order placed by a customer is a binding offer. We may accept this offer, at our discretion, either by sending an order confirmation within four weeks, or by dispatching the goods ordered to the purchaser within the same period.
- (2) Verbal information and agreements on our part are only binding if confirmed by us in writing or by dispatch of the goods and invoice.
- (3) Quantities are in all cases only approximations. Variations of 10% more or less caused due to safety and filling considerations are deemed to be in accordance with the contract. Such quantity variations will be taken into account in full in the invoice amount.
- (4) We accept no liability for obvious errors, typographical errors or calculation errors in the documentation provided. The customer is obliged to notify us of such errors, so that we can correct and replace our order confirmation and invoice. This also applies in the event of missing documentation.
- (5) The order no., customer no. and invoice number shown in our order confirmation or invoice must be quoted when settling the invoice by bank transfer or by cheque, and in all correspondence relating to the order.

§ 3 Samples, quality specifications

- (1) Samples, models, brands, containers, packaging, drawings, tools, patterns or similar, and all finished or semi-finished products supplied for inspection or approval purposes (hereafter referred to jointly as "samples"), remain our property, and may only be passed on to third parties with our express written approval. Subject to any other agreements to the contrary in individual cases, these must be returned to us, without any special request, on completion of the relevant order, i.e. at the latest on delivery of the goods. Such samples may not be used by the customer for his own purposes. They may in particular not be used for the manufacture or development of his own or other product. The use of our samples, models or similar for advertising purposes is not allowed without our express permission.
- (2) All samples are at all times deemed to be simply samples for inspection. Analysis information, colour designations etc. should only be regarded as approximations. Even in the event of certain assured properties, variations within the normal tolerances are still permissible. In case of differences of opinion, the matter will be decided on the basis of an analysis by a certified commercial chemist. The costs of such an analysis will be paid by the party losing the dispute.

§ 4 Delivery times and quantities

- (1) The agreed delivery dates and times should be regarded as approximations, unless a fixed time has been expressly agreed in writing.
- (2) The delivery period begins with the dispatch of the order confirmation, although not before receipt of any documentation, approvals or releases to be provided by the purchaser or receipt of any agreed advance payments. The delivery period is deemed to have been observed if the customer has been notified that the goods are ready for dispatch, or have left the works, by the end of the agreed delivery period.
- (3) The delivery period is automatically extended in the event of such problems as labour disputes, strikes, lock-outs or the occurrence of unforeseen events over which we have no control, by the duration of such events. This also applies if such problems are also experienced by our subsidiary suppliers. No further consequences of delay occur for the duration of any of the above problems, even if we are already late in providing the goods/services at the time of the occurrence of these circumstances. We will notify the purchaser of the start and end of such problems as soon as possible.
- (4) Part-deliveries may be made within the specified delivery periods, to a reasonable extent, and provided that the purchaser has not made any specifications to the contrary at the time of placing the order, and stating cogent reasons.
- (5) The delivery quantity is defined by our written order confirmation.
- (6) We reserve the right, during the delivery period, to make changes to the product, due to improvements in technology or legal requirements, provided that the goods are not changed to an excessive extent, and that it is still reasonable to expect the purchaser to accept such changes.

§ 5 Cancellation costs

If the purchaser withdraws from an order that has already been placed without entitlement, we may, without detriment to our right to claim further actual damages, make a charge of 10% of the purchase price to cover the costs of processing the order and for lost profit. The purchaser has the right to substantiate lesser damages.

§ 6 Dispatch, packaging

- (1) The dispatch of the goods and the containers provided by us takes place in all cases on the account of and at the risk of the customer, even in the case of carriage-paid delivery. If delivery and receipt is made carriage-paid to the nearest collection point, freight and/or transport charges are not included. The risk is transferred to the customer on hand-over of the goods to the haulier, unless the goods are being delivered by our own transport. The acceptance of the goods by the haulier constitutes confirmation of the acceptable properties of the packaging.
- (2) In the event of delivery by tanker or container vehicle, the customer undertakes to empty the tanker or container immediately. Excessive waiting or standing times entitle us to apply standing charges corresponding to the resulting loss of use of the vehicle and the appropriate personnel costs. Our obligations during delivery are restricted to the operation of the vehicle's equipment and systems. Insofar as our employees provide further assistance in unloading or emptying containers, and thereby cause damage to the goods or any other damage, they act not on our behalf, but at the sole risk and liability of the customer.
- (3) Returnable containers are provided free of charge for a period of 2 months. After expiry of this period, containers will be charged for on a rental basis in accordance with the relevant price list, for all periods in excess of 2 months. This price list will be provided when returnable containers are supplied. Returnable containers must be returned carriage-paid to the Hagen main railway station or to our works. The transport risk during return delivery of the containers is borne by the customer.
- (5) Non-returnable containers may only be reintroduced into circulation after removal of our company logo and goods designation.
- (6) Packaging becomes the property of the customer, and will be charged. Carriage, freight costs and packaging charges will be invoiced separately. The selection of the dispatch method will be made at our discretion.

§ 7 Acceptance and transfer of risk

- (1) The customer undertakes to accept the goods delivered. In the absence of any other agreement to the contrary (delivery by us), the goods will be handed over to the haulier in our works in Hagen. The customer is entitled to check the goods at the point of hand-over within fourteen days of receipt of notification that the goods are ready for delivery or other similar notification. The purchaser undertakes to accept the goods within the same period, unless he is temporarily prevented from doing so for reasons beyond his control.
- (2) If the customer delays acceptance of the goods for longer than fourteen days following receipt of notification that the goods are ready for delivery, due to deliberate or gross negligence we are entitled, after setting a further period of fourteen days for acceptance, either to withdraw from the contract or claim compensation for damages on the grounds of non-fulfilment of the contract. The setting of a further period for acceptance is not required, if the customer definitely refuses to accept the goods, or is clearly not in a position to pay the purchase price within this time.
- (3) The risk is transferred to the customer of acceptance of the goods. If the customer declares that he is not prepared to accept the goods, the risk of the accidental loss or deterioration of the goods is transferred to the customer at the time of such declaration.

§ 8 Prices, minimum order surcharge, payment terms

- (1) Our prices are basically subject to value-added tax at the currently prevailing rate. The calculation is made on the basis of the quantities or weights as determined by us. The calculation may however be made on the basis of the quantities or weights as determined by the customer, provided that such a calculation is made on the basis of calibrated weighing equipment, and the goods have been transported at our risk.

- (2) Unless specified otherwise in the order confirmation, our prices are ex-works.
- (3) Price changes are permissible in the event of a period of more than four months between conclusion of the contract and the agreed delivery date. If wage costs, raw material prices or other material costs increase after this time, or if customs duties, taxes, freight charges or other charges for mineral oils are increased, we are entitled to increase the price in line with such cost increases. This also applies in the event that a fixed price has been agreed. The customer is only entitled to withdraw from the contract if the price increase substantially exceeds the general increase in living costs between the time of order and delivery. If the customer is a commercial entity, a legal entity under public law or a special asset under public law, price changes in accordance with the above stipulations are permissible in the event of a period of more than six weeks between conclusion of the contract and the agreed delivery date.
- (4) In case of delivery of small quantities, an appropriate surcharge will be applied, if delivery is made ex-works.
- (5) The purchase price and any charges for ancillary services become due for payment on delivery of the goods, unless other terms have been expressly agreed in writing. Cheques and foreign exchange only qualify as payment once they have been honoured. The acceptance of foreign exchange requires in all cases prior written agreement. On acceptance of foreign exchange, the relevant bank discount and handling costs will also be charged. These must be paid immediately and in cash.

§ 9 Reconciliation, late payment

- (1) If the customer is a commercial entity, a legal entity under public law or a special asset under public law, the retention of payments on the grounds of any counter-claims by the customer not acknowledged by us or established in law is not permissible, nor is any reconciliation of payments against such claims.
- (2) If the purchaser is a commercial entity, he is deemed to be in arrears with payment if he fails to make payment following our reminder, which will be sent out immediately following the due date of the purchase price. Irrespective of this fact, the customer, if he is a commercial entity, will be deemed to be in arrears with payment if he fails to make payment by a payment date defined in the contract. This does not affect the relevant legal stipulation, according to which the debtor also automatically falls into payment arrears thirty days after receipt of an invoice.

§ 10 Complaints, faults, guarantee

- (1) In accordance with § 377 HGB (German Commercial Code), any complaints must be made immediately, and at the latest within two weeks following receipt of the goods. Complaints are not allowed if it is no longer possible for us to carry out a subsequent inspection of the goods under complaint. In the event of a complaint, the customer must provide us with a sample of at least 1 kg (in words: one kilogram) of the goods under complaint. The sample must be taken in accordance with the DIN norm applicable to the product. We must also be given the opportunity to satisfy ourselves that the sample has been taken properly.
- (2) If the customer uses or processes the goods delivered, this is deemed to constitute acceptance of the goods, and the consequent relinquishment on the part of the customer of any further complaints or claims of any sort.
- (3) In the case of commercial entities, the guarantee period is 12 months after transfer of risk to the purchaser. In the case of consumers in the sense of § 13 BGB (German Civil Code), the legal guarantee periods apply.
- (4) In the event of faulty goods, we will at our discretion either replace the goods, or, wherever possible, provide rectification. Goods under complaint may only be returned with our agreement.
- (5) The guarantee does not apply to damages sustained after the transfer of risk due to faulty or negligent handling, improper use, unsuitable materials or electrical and/or mechanical influences not provided for in the purchase contract.
- (6) Liability is excluded for all damages not expressly referred to in the above stipulations or caused by the goods themselves.
This does not apply to damages,
 - a) caused by deliberate or gross negligence on the part of the owner, senior employees or other persons engaged by Bechem for the purposes of fulfilment of the contract.
 - b) based on culpable infringement of principle contract obligations. In the latter case however, Bechem is liable only for typical and foreseeable damages sustained.
- (7) The exclusion of liability does not apply in cases in which liability exists in the event of faults in the goods for damage to life, limb or health or material damages caused by the use of private property. Nor does the liability exclusion apply to the absence of assured properties, in cases where such assurance was particularly intended to safeguard the purchaser against damages not caused to the goods themselves.

§ 11 Retention of ownership

- (1) We retain ownership of the goods delivered until receipt of full payment of the purchase price and all other future claims arising out of the business relationship with ourselves.
- (2) In the event of infringement of the contract on the part of the customer, and particularly in the case of late payment, we are entitled, after suitable warnings, to reclaim the goods. The customer is in turn obliged to surrender the goods.
- (3) Our retention of ownership or seizure of the goods do not constitute withdrawal from the contract, provided that the stipulations of §§ 491 to 504 BGB do not apply or that we have made the relevant express written declaration.
- (4) If the goods delivered are inseparably mixed with other materials not belonging to us, we acquire joint ownership of the resulting product/materials in the same ratio as the value of the goods delivered to the resulting product/materials. The customer is responsible for keeping these jointly-owned goods on our behalf.
- (5) The customer may not assign the goods delivered, nor transfer them as security. In the event of assignment, seizure or other disposal by third parties, the customer must notify us to this effect immediately, and provide us with any and all documentation required in order to enable us to protect our rights and interests. Enforcement authorities and third parties must be informed of our ownership of the property in question.
- (6) We undertake, at the request of the customer, to release any securities assigned to us, in cases where the value of such securities exceeds any claims still outstanding by more than 20%.
- (7) In the case of commercial entities, legal persons under public law or special assets under public law, the following also applies:
The customer is entitled to resell the goods delivered in the course of his normal business activities, provided that he fulfils his obligations toward us. However, he hereby relinquishes in our favour all claims in the amount of the agreed purchase price (including value-added tax) accruing to him as a result of such resale, irrespective of whether the goods delivered were resold without or following further processing. The customer is still entitled to receive such claims following their relinquishment. This does not affect our entitlement to collect such claims ourselves; however, we undertake not to collect such claims ourselves as long as the customer fulfils his payment obligations and does not fall into arrears with payment. If this does however become the case, we are entitled to require the customer to notify us of the relinquished claims and the relevant debtors, to provide us with all the necessary information to collect such claims, to hand over all the relevant documentation and to notify all debtors of the relinquishment of such claims.
- (8) Any warehouse operators must be notified of our ownership of the goods in question prior to storage.

§ 12 Domestic market value-added tax laws

The customer gives his assurance of the accuracy and correctness of his address and VAT ID-No. If a delivery is treated as subject to tax due to omissions in the address or VAT ID-No. information, the customer must reimburse us for any taxes thus incurred.

§ 13 Concluding conditions

- (1) All legal relationships between ourselves and the customer are subject exclusively to German law, even if the customer has his registered office abroad. The application of UN purchasing law is expressly excluded.
- (2) Seat of adjudication and place of fulfilment for commercial entities is Hagen.
- (3) If any of the above clauses should be or become invalid, any invalid stipulations will be replaced by others which most closely approximate the original commercial purpose of the contract, while taking due account of the interests of both parties.