

I. Terms and Conditions for Supply

§ 1 General

1. Our Terms and Conditions of Supply apply exclusively. General Terms and Conditions which conflict with or diverge from or supplement our Terms and Conditions of Supply are not recognized by us even if these are known and not opposed and/or the delivery is carried out without reservation.

2. These Terms and Conditions of Supply apply to all present and future business relations. Previous contrary conditions hereby lose their validity.

3. For the purposes of these Terms and Conditions of Supply a consumer is any natural person who concludes a legal transaction the purpose of which cannot be ascribed to his commercial or self-employed activities (§ 13 BGB German Civil Code).

For the purposes of these Terms and Conditions of Supply a business owner is a natural or juristic person or a legal partnership who carries out his commercial or self-employed activity when he concludes a legal transaction (§ 14 BGB German Civil Code).

Where the term „Purchaser“ is used in the following Terms and Conditions of Supply this refers to both consumers and business owners.

§ 2 Quotation and conclusion of contract

1. Our quotations are without engagement. We reserve the right to make technical changes and reasonable changes of form, colour and/or weight.

2. By placing an order the Purchaser makes a binding declaration that he intends to buy the item ordered.

The quotation is only considered as accepted through issue of a confirmation of order or through supply of the goods. Subsidiary agreements and assurances shall be in the written form.

3. BOS reserves all rights to title and copyright of cost estimates, drawings and similar documents. This also applies to all documents that are designated as „confidential“. Such documents must not be revealed to third parties without our prior express permission.

§ 3 Prices and terms of payment

1. Prices are „ex works“ prices excluding packing, to which the statutory value added tax must be added. This tax is shown separately on the invoice at the statutory value prevailing on the day of issue of the invoice.

If the Purchaser requests delivery of the goods the transport costs are charged additionally.

2. Expenses incurred as a result of changes requested by the Purchaser to the type or quantity of the goods supplied subsequent to the issue of our confirmation of order and/or which arise through fulfilment of subsequent or unforeseeable official requirements and demands are similarly invoiced as a separate addition to the quoted purchase price.

3. Installation costs are invoiced separately.

4. Prompt payment discounts must be covered by a separate written agreement.

5. In the absence of a special agreement the purchase price is due and payable within 30 days of the date of invoice. Otherwise the statutory rules of Germany for default or delay in payment apply.

6. The Purchaser is only entitled to offset debits against credits if his counterclaims have legal force, are undisputed or recognized by us.

7. The Purchaser is only entitled to right of retention in so far as his counterclaim is based on the same contractual relationship.

§ 4 Passing of risk

1. Delivery is „ex works“.

2. The risk of accidental loss and accidental deterioration of the purchased goods passes to the Purchaser on delivery of the goods. In case of sale to destination according to Purchaser's instructions, if the Purchaser is a business owner, the risk passes to the Purchaser when the purchased goods are delivered to the transport person.

3. The risk of accidental loss and accidental deterioration of the purchased goods only passes to the Purchaser on delivery of the goods including the case of sale to destination according to Purchaser's instructions when the Purchaser is the consumer.

4. If the Purchaser is in default of acceptance, risk of accidental loss and accidental deterioration of the purchased goods passes to the Purchaser from the day of readiness for shipment onwards. Any storage costs are on Purchaser's account.

5. The above items 1 – 4 also apply to part deliveries.

§ 5 Delivery times

1. Quoted delivery dates and delivery periods apply only approximately unless a delivery time is expressly promised by BOS in written form.

2. The period of delivery only begins after all technical questions have been mutually clarified with the Purchaser.

3. The period of delivery shall be extended appropriately in the event of unforeseen hindrances for which BOS is not responsible such as force majeure, strikes or operating breakdowns. The Purchaser must be promptly informed of the reason for and the expected duration of the delay.

If it is expected that the hindrance cannot be overcome within a reasonable period of time both the Purchaser and BOS can withdraw from the contract completely or in part.

§ 6 Retention of title

1. BOS reserves all rights to title of the purchased goods until the full amount of the purchase price has been paid. If the Purchaser is in violation of the contract, in particular by default in payment, BOS is entitled after setting a reasonable time-limit to withdraw from the contract and demand return of the purchased goods. BOS is entitled to utilize the purchased goods following their return. The proceeds from the utilization less reasonable utilization costs shall be set off against the debts of the Purchaser. If the supplier's right to withdraw cannot be put into practice, the supplier is entitled to a claim for damages for the cases provided for in law.

2. The purchaser is entitled to process and sell the delivered goods as an orderly course of business, he assigns at this point, however, all claims for the amounts of the final invoice sums of our claim, that arise from reselling to buyers or third parties, independent of whether the delivered goods (purchase item) are resold with or without further processing. The purchaser is entitled to collect such claims even after the assignment. Our authorization to collect such claims ourselves remains untouched. We commit ourselves, however, not to take any collective measures as long as the purchaser pays his liabilities arising from the agreed proceeds.

3. The processing or modification of the delivered goods (purchase item) via the purchaser is always to take place in our interest. Should the purchase item be processed with other articles not belonging to us, then we acquire the joint ownership of the new item in proportion to the value of the purchase item in relation to the other processed articles at the time of processing. The conditions remain the same for the items resulting from the processing as for those of the purchase item delivered under retention.

§ 7 Warranty claims

1. A Purchaser who is a business owner is only entitled to make warranty claims if he carries out his obligations to examine ex officio and gives notice of defects properly in accordance with § 377 HGB (German Commercial Code).

2. If the Purchaser is a business owner, BOS is entitled to choose between having the faults remedied or receiving replacements as fulfilment of the warranty obligations.

If the Purchaser is a consumer, the Purchaser is entitled to choose between having the faults remedied or receiving replacements as fulfilment of the warranty obligations. BOS is however entitled to refuse the kind of warranty fulfilment chosen if this is only possible at disproportionate expense and the other kind of warranty fulfilment does not involve substantial disadvantages for the Purchaser.

3. If the Purchaser is a business owner, the product description of the manufacturer is deemed to have been agreed as the state of the purchased goods. Public announcements, sales and advertising statements of the manufacturer do not constitute a contractual specification of the state of the purchased goods.

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4. If the Purchaser makes a claim for damages based on intention or gross negligence or on the intention or gross negligence of his agent or person employed in fulfilling an obligation, BOS is liable in accordance with statutory provisions. If BOS is not accused of intended or grossly negligent breach of duty, liability for damages is limited to losses which occur typically. This does not apply to liability for culpable violation of life, body or health nor for compulsory liability under the German Product Liability Law.
5. If the Purchaser is a business owner and provided that he carries out his obligations to give notice of defects properly in accordance with item 1, the statutory period of limitation for warranty claims of the Purchaser which are not governed by the time-limit of § 438 Paragraph 1 No. 2 BGB (German Civil Code) is 1 year from delivery of the goods. If the Purchaser is a consumer, the statutory period of limitation for warranty claims of the Purchaser which are not governed by the time-limit of § 438 Paragraph 1 No. 2 BGB (German Civil Code) is 2 years from delivery of the goods.
6. BOS does not provide the Purchaser with a guarantee in the legal sense. Manufacturers' guarantees are unaffected by this.

§ 8 Limitation of liability

1. In the case of other claims for damages involving ordinary negligent breach of duty, BOS is only liable for losses that occur typically with the type of purchased goods. This applies equally in the case of ordinary negligent breach of duty by the legal agent of BOS or by a person employed by BOS to fulfil an obligation.

The liability of BOS in case of ordinary negligent breach of nonessential contract obligations is precluded when the Purchaser is a business owner.

2. Liability for culpable violation of life, body or health and compulsory liability under the German Product Liability Law are unaffected by the above provisions.

§ 9 Final provisions

1. This contract is governed by the Law of the Federal Republic of Germany. The provisions of the UN Purchase Law do not apply.
2. Place of fulfilment for deliveries is the plant.
3. Place of fulfilment for payments is the place of business of the vendor.
4. When the Purchaser is a businessman, the place of jurisdiction for all disputes arising from this contract is exclusively the place of business of BOS. The same applies when the Purchaser is a consumer and does not have a general place of jurisdiction in Germany or if his whereabouts are not known at the time of commencement of an action.
5. If individual provisions of this contract including these Terms and Conditions of Supply are or become partly or completely inoperative, the remaining provisions remain unaffected. The partly or completely inoperative regulation shall be replaced by a regulation whose economic effect is as close as possible to that of the inoperative regulation.

II. Installation Conditions

If BOS performs installation or similar services either separately or in addition to supplying the purchased goods, the following Installation Conditions apply:

§ 1 Preconditions

1. If parts of the delivery are clearly damaged or if the delivery is incomplete the Purchaser must inform BOS at the latest one day after delivery so that remedial action can be taken as far as possible before the installation team arrives. If the Purchaser culpably fails to inform BOS (including ordinary negligence), any additional installation costs thus caused will be separately charged.
2. The delivered parts must be stored in a dry place and protected from the influence of weather and from damage by third parties.
3. One or more specialist installers are provided by BOS to suit the scope of supply.

Following consultation with BOS, the Purchaser must make sufficient unskilled workers available without mutual invoicing.

4. The following items are not part of our obligations to be performed: the setting up and dismantling of scaffolding; pit,

mortice, brick and flooring work as well as electric installation. Furthermore, the unloading of freight cars or lorries, the transport of all parts to where they are to be installed and all glazing work which is not covered in the scope of delivery.

5. Tools normally used in the trade are provided by BOS. In addition to these, the Purchaser must have ready the following materials for the installation: assistants and auxiliary material as well as lifting tools etc. and if necessary lighting. All preparations for the installation must be finished before the fitters arrive, so that the aforesaid can begin work immediately on arrival on site. Any delay not resulting from the supplier will be charged separately. The Purchaser is obliged to provide one or more metre marks per floor. The given metre marks must remain present until the final inspection.

6. To ensure proper installation, the following requirements must be fulfilled by the Purchaser on site: electric and water supply as well as free access and a clear working area.

7. The Purchaser must ensure that the installation work can be carried out at the agreed time. In particular the Purchaser must ensure that all necessary preparatory work such as masonry work, plastering, caulking and floor preparation have been completed. The floor must be passable and sufficiently capable of bearing loads.

The Purchaser must inform BOS in writing at latest 5 days before the agreed date whether the installation work can be performed on the agreed date.

8. The Purchaser must inform the installation team about safety regulations including in particular those covering welding work, no smoking zones, protective clothing etc...

If the Purchaser culpably fails to carry out these obligations (including ordinary negligence) and if this results in loss or damage, the Purchaser shall release BOS from his liability for damages.

9. The Purchaser must provide electric power for tools and if necessary for lighting on site. If a lockable room is required for the installers where tools and small parts can be stored, the Purchaser must be informed in advance about this and must provide this on site.
10. If the equipment to be installed is provided with an electric drive, the electrical installation and the connection and adjustment of the equipment is to be performed on site.
11. Following installation, the Purchaser must observe the following points/take the following precautions: at the earliest, the installed doors, frames and windows can be cleared for use 2 days after the anchor holes have been closed with mortar.

§ 2 Hourly rate work

1. If the installation work is not carried out for a lump sum but on a time basis, the price for the installation work is to be calculated using the hourly rate plus any travel costs, freight costs, cost for keeping equipment available etc. The current standard price list of BOS for installation work applies.
2. Invoicing and payment following receipt of invoice is to be in accordance with item 3 of the Supply Conditions. Installation bills are due without cash discount.

§ 3 Acceptance

1. On completion of the installation work, the Purchaser is entitled and obliged to check this and provide a written acceptance report.
2. The acceptance is granted equality of status if the Purchaser does not perform the acceptance test within a reasonable time period granted by BOS although he is obligated to do this.
3. As from acceptance, warranty claims concerning known defects based on § 634 No. 1 – No. 3 BGB (German Civil Code) cannot be brought against BOS if the Purchaser has not reserved his rights on account of this defect at the acceptance procedure.

§ 4 Limitation of actions

Warranty claims of the Purchaser arising from the installation work become statute-barred after one year following acceptance. The statutory period of limitation of § 634 Paragraph 1 No. 2 BGB (German Civil Code) remains unaffected.