

**GENERAL TERMS AND CONDITIONS (SALE)**

OR-00-1050-Rev2\_AGB-Verkauf-EN

**1. GENERAL SCOPE OF APPLICATION**

- 1.1 These General Terms and Conditions (GTC) shall apply to all business relations between Bray Armaturen & Antriebe GmbH, Halskestraße 25, 47877 Willich, Germany (hereinafter referred to as "Seller") and the Purchaser (Seller and Purchaser hereinafter jointly the "Parties" or individually the "Party"), which involve the sale and/or other delivery of chattels ("Goods") to the Purchaser, irrespective of whether the Seller manufactures the Goods himself or purchases them from suppliers (§§ 433, 651 German Civil Code (BGB)). These GTC shall only apply if the Purchaser is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
- 1.2 In addition to these GTCs, the contractual provisions individually agreed between the Parties for individual purchases of Goods shall apply. Deviating, conflicting or supplementary general terms and conditions of the Purchaser shall only apply if and to the extent the Parties have expressly agreed their validity in writing. This requirement shall apply in any event, even if, for example the Seller delivers the Goods without reservation in the knowledge of the Purchaser's general terms and conditions.
- 1.3 If any individual provisions mentioned in 1.2 of these GTC are contradictory, the following order of precedence shall apply, whereby the provisions of the higher-ranking contractual agreements shall prevail over the lower-ranking ones:
- (1) in case of individual purchases of Goods, individually agreed contractual provisions between the Parties;
  - (2) these GTC of the Seller;
  - (3) in exceptional cases, the Purchaser's GTC which have been included by an appropriate, express written agreement.
- 1.4 Legally significant declarations and notifications which are to be made by the Purchaser to the Seller after the conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) must be made in writing.
- 1.5 References to the validity of statutory provisions within these GTC only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these GTC.

**2. CONCLUSION OF CONTRACT**

- 2.1 The offers of the Seller are subject to change and non-binding. This shall also apply if the Seller has provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards, etc.), other product descriptions or documents - also in electronic form - to which the Seller reserves the right of ownership and copyright.
- 2.2 The order of the Goods by the Purchaser is considered a binding offer of contract. Unless otherwise specified in the order, the Seller shall be entitled to accept the Purchaser's offer within 30 days from the day of its receipt.
- 2.3 The Seller's acceptance shall either be declared in writing (e.g. by order confirmation), in text form (e.g. e-mail) or through delivery of the Goods to the Purchaser.
- 2.4 The assignment of the Purchaser's claims against the Seller is excluded.
- 2.5 In the event of cancellations after receipt of order, the following cancellation fees will apply based on the order value:
- 20% - 30 days
  - 40% - 60 days
  - 60% - 90 days
  - 90% - 120 days

**3. DELIVERY TIME AND DELAY IN DELIVERY**

- 3.1 The delivery period shall be individually stipulated or specified by the Seller when accepting the order.
- 3.2 If the Seller is unable to meet individually agreed binding delivery periods for reasons for which it is not responsible (in particular, but not exclusively, in the event of disruptions in operation of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lock-outs ('Aussperrungen'), shortages of labour, energy or raw materials, difficulties in procuring necessary official permits, official measures or the failure of suppliers to deliver, incorrectly deliver or deliver on time), the Seller shall inform the Purchaser without undue delay and, at the same time, inform the Purchaser of the estimated new delivery period. If the performance remains unavailable even within the new delivery period, the Seller shall be entitled to withdraw from the contract entirely or partly; the Seller shall reimburse any consideration that might have been already made by the Purchaser without undue delay. Non-availability of performance shall in particular be deemed in the case of delayed delivery by the Seller's suppliers; if the Seller has concluded a congruent covering transaction, if neither the Seller nor its suppliers are at fault or if the Seller is not obliged to procure in individual cases.
- 3.3 The occurrence of the delay in delivery by the Seller is determined in accordance with the statutory provisions.
- 3.4 The rights of the Purchaser according to Section 7 of these GTC and the statutory rights of the Seller, in particular if the obligation to perform is excluded (e.g. due to impossibility or unreasonableness of the performance and/or subsequent performance), remain unaffected.

**4. DELIVERY, TRANSFER OF RISK, ACCEPTANCE, DEFAULT OF ACCEPTANCE**

- 4.1 The delivery is always FCA, Halskestraße 25, 47877 Willich, Germany, in the sense of Incoterms 2020 exclusive packaging. The registered office of the Seller is also the place of performance for any subsequent performance. At the request and expense of the Purchaser, the Goods shall be shipped to another destination (sale to destination). Unless otherwise agreed, Seller shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) himself.
- 4.2 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Purchaser at the latest upon delivery. In the case of mail order purchases, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass to the Purchaser upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the Purchaser is in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- 4.3 If the Purchaser is in default of acceptance, fails to provide an act of cooperation or if the

delivery by the Seller is delayed for other reasons for which the Purchaser is responsible, the Seller shall be entitled to demand compensation for any resulting damages including additional expenses (e.g. storage costs). For this purpose, the Seller charges 0.5 % of the net price (delivery value) for each completed calendar week of the default of acceptance but altogether not exceeding a total of 5% of the delivery value, beginning with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods. In the event of final non-acceptance of the Goods by the Purchaser, the lump-sum compensation for the default of acceptance shall not exceed 10% of the delivery value. The Seller's right to prove a higher damage and the statutory claims of the Seller (in particular compensation for additional expenses, appropriate compensation, termination) remain unaffected; however, the lump sum is to be credited against further monetary claims. The Purchaser reserves the right to prove that the Seller has suffered no damage at all or only a considerably lower damage than the above lump sum.

- 4.4 If the Purchaser is in default of acceptance or collection or if he is responsible for a delay in shipment or delivery, the Seller is - irrespective of further damages - entitled
- a) to store the Goods at the cost and risk of the Purchaser at the Seller's or a third party's premises and to charge the Purchaser storage costs of at least 0.5 % of the invoice amount attributable to the Goods not accepted for each commenced week of storage, or
  - b) to sell the unaccepted Goods elsewhere after expiry of a period of grace set by the Seller (so-called substitute transaction, 'Deckungsgeschäft'); in this case the Purchaser shall be liable for the difference between the agreed purchase price and the sales revenue from the sale elsewhere and/or
  - c) to withdraw from the contract after expiry of the period of grace set by the Seller. In all other respects § 300 BGB shall apply.

**5. PRICES AND TERMS OF PAYMENT**

- 5.1 Unless otherwise agreed upon in individual cases, the Seller's current ex warehouse prices at the time of conclusion of the contract shall apply, plus statutory value added tax. The minimum order value is 150 EUR.
- 5.2 In the case of sale by dispatch (see Section 4.1 of these GTC), the Purchaser shall bear the transport costs ex warehouse and, if requested by the Purchaser, the costs of transport insurance. Any customs duties, fees, taxes and other public charges shall be borne by the Purchaser.
- 5.3 The purchase price is due and payable within 30 (thirty) days of invoicing and delivery or acceptance of the Goods. The Seller shall, at any time, also in the course of an ongoing business relationship, be entitled to deliver in whole or in part only against prepayment. The Seller shall declare any corresponding reservation with the order confirmation at the latest.
- 5.4 Upon expiry of the aforementioned payment period, the Purchaser shall be in default. During default, interest is to be paid on the purchase price at the respectively applicable statutory default interest rate. The Seller reserves the right to claim any further damages caused by default. In relation to merchants, the Seller's claim to the commercial maturity interest (§ 353 German Commercial Code (HGB)) shall remain unaffected.
- 5.5 The Purchaser shall only be entitled to set-off or to retain, if and to the extent that its claims are legally established without further legal recourse or undisputed. In the event of defects in the delivery, the Purchaser's counter claims, in particular according to Section 7 of these GTC, shall remain unaffected.

**6. RETENTION OF TITLE**

- 6.1 The Seller shall retain title with respect to the sold Goods until full payment of all present and future claims under the purchase contract and of those resulting from a continuous business relationship (secured claims).
- 6.2 The Goods subject to retention of title may neither be pledged to third Parties nor assigned by way of collateral security, before the entire payment is made. The Purchaser shall notify the Seller immediately in writing if an application for the opening of insolvency proceedings is made or if third Parties seize the Goods belonging to the Seller ('Pfändungen').
- 6.3 In the event of breach of contract by the Purchaser, in particular in the event of non-payment of the due purchase price, the Seller shall be entitled to withdraw from the contract in accordance with the statutory provisions and then demand the return of the Goods. If Purchaser does not pay the due purchase price, the Seller may only assert these rights if the Seller has unsuccessfully set a reasonable deadline for payment in advance or if such setting of a deadline is dispensable under the statutory provisions.
- 6.4 Until revocation in accordance with Section 6.4 lit. c) of these GTC, the Purchaser shall be entitled to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition:
- a) The retention of title extends to the full value of the products resulting from the processing, mixing or combination of the Goods of the Seller, whereby the Seller is considered the manufacturer in these cases. If the right of ownership of third parties remains in force in the event of such processing, mixing or combination with goods of third parties, the Seller shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined products. Apart from that, the same shall apply for the arising product as for the goods delivered, which are subject to reservation of title.
  - b) The Purchaser already assigns to the Seller any claims against third parties arising from the resale of the Goods or the product, wholly or in the amount of the possible co-ownership share of the Seller in accordance with the above Section 6.4 lit. a) of these GTC as security. The Seller accepts the assignment. The Purchaser's obligations mentioned in Section 6.2 of these GTC shall also apply in consideration of the assigned claims.
  - c) In addition to the Seller, the Purchaser remains authorized to collect any debts. The Seller undertakes not to collect the debt as long as the Purchaser fulfils his payment obligations towards the Seller, as long as there is no inability to pay and as long as the Seller does not exercise any of its rights in accordance with Section 6.3 of these GTC. If this is the case, however, the Seller can demand that the Purchaser discloses the assigned claims and their debtors to the Seller, that the Purchaser provides all necessary information for their collection, hands over the associated documents and informs the debtors (third parties) of the assignment. In this case,

**GENERAL TERMS AND CONDITIONS (SALE)**

OR-00-1050-Rev2\_AGB-Verkauf-EN

the Seller shall additionally be entitled to revoke the Purchaser's capacity to sell and process the Goods which are subject to reservation of title.

- d) If the realisable value of the securities exceeds the Seller's claims by more than 10%, the Seller shall upon request by the Purchaser release securities of the Seller's demand.

**7. CLAIMS OF THE PURCHASER FOR DEFECTS**

- 7.1 The statutory provisions shall apply with regard to the rights of the Purchaser in case of material defects and defects of title (including wrong and short delivery as well as improper assembly or faulty assembly instructions) unless otherwise stipulated below. Special statutory provisions on final deliveries of products to a consumer shall in all cases remain unaffected (supplier recourse according to §§ 478, 445a BGB).
- 7.2 The principal basis for the Seller's liability for defects shall be the agreement made on the condition of the Goods. All product descriptions which are subject of the individual order shall be deemed an agreement on the condition of the Goods; it does not make a difference whether the product specification originates from the Purchaser, the manufacturer or the Seller.
- 7.3 As far as the quality has not been agreed upon, the statutory provisions shall be used to determine whether a defect is present or not (§ 434 para. 1 p. 2 and 3 BGB). However, the Seller does not assume any liability for public statements made by the manufacturer who is independent from the Seller or any third party (e.g. advertising statements) which the Purchaser has not indicated as being decisive for its purchase.
- 7.4 The Purchaser's claims for defects presuppose that the Purchaser has complied with his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB - 'kaufmännische Untersuchungs- und Rügepflicht'). Should any defect be discovered during the inspection or later, the Seller must be notified of this without undue delay in writing. The notification shall be deemed to be without undue delay if it is made within two weeks of the discovery of the defect, whereby the timely dispatch of the notification shall be sufficient to meet the deadline. Irrespective of this obligation to inspect and give notice of defects, the Purchaser shall notify the Seller in writing of obvious defects (including wrong and short delivery) within two weeks of delivery, whereby the timely dispatch of the notification shall be sufficient to meet the deadline. If the Purchaser fails to carry out the proper inspection and/or notification of defects, the Seller's liability for the unreported defect is excluded.
- 7.5 If the delivered Goods are defective, the Seller may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). The Seller's right to refuse subsequent performance under the statutory requirements shall remain unaffected.
- 7.6 The Seller is entitled to make the subsequent performance owed dependent on the Purchaser paying the due purchase price. However, the Purchaser shall be entitled to withhold a reasonable part of the purchase price in relation to the defect.
- 7.7 The Purchaser shall give the Seller the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected Goods for inspection purposes. In the event of a replacement delivery, the Purchaser has to return the defective Goods to the Seller in accordance with the statutory provisions. Any subsequent performance does not include either the disassembly or the reassembly of the defective item, if the Seller was not initially obliged to assemble the item.
- 7.8 The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any assembly and disassembly costs shall be borne or reimbursed by the Seller in accordance with the statutory provisions if a defect is actually present. Otherwise, the Seller can demand reimbursement from the Purchaser of the costs incurred as a result of the unjustified demand for the removal of defects (in particular testing and transport costs) unless the lack of defect was not recognisable to the Purchaser.
- 7.9 In urgent cases, e.g. if operational safety is endangered or in order to prevent any excessive damage, the Purchaser shall have the right to remedy the defect himself and to demand compensation from the Seller for the expenses objectively required for this purpose. The Seller shall be notified of any such self-remedy without undue delay and shall give its approval. The right to self-remedy does not exist if the Seller would be entitled to refuse the corresponding subsequent performance in accordance with the statutory provisions.
- 7.10 The Purchaser's claims for damages or reimbursement of unsuccessful expenses shall only exist in accordance with Sec.7 of these GTC, even in the case of defects, and shall be excluded beyond that.

**8. OTHER LIABILITY**

- 8.1 Unless otherwise provided for in these GTC including the following provisions, the Seller shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.
- 8.2 Within the scope of the liability for culpability, the Seller shall be liable for damages in the event of intent and gross negligence. In a case of ordinary negligence, the Seller shall only be liable, subject to a lower standard of liability in accordance with statutory provisions (e.g. for diligence in his own affairs)
- a) for damages resulting from injury to life, body or health,  
b) for damages resulting from the not insignificant breach of a material contractual obligation (obligation whose fulfilment enables the due execution of the contract in the first place and on which the contractual partner regularly relies and may rely on); in such case, the Seller's liability is limited to the compensation of a foreseeable, typically occurring damage.
- 8.3 The limitations of liability resulting from Section 8.2 of these GTC shall also apply to breaches of duty by or in favour of persons whose fault the Seller is responsible for according to statutory provisions. The limitations as stated in Section 8.2 shall not apply if the Seller has fraudulently concealed a defect or has assumed a guarantee for the quality of the Goods as well as for claims of the Purchaser under the Product Liability Act (ProdHaftG).

**9. LIMITATION**

- 9.1 Notwithstanding § 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year after installation, max. 18 months from delivery.

**10. CHOICE OF LAW AND PLACE OF JURISDICTION**

- 10.1 These GTC and the contractual relationship between the Seller and the Purchaser shall be governed by the laws of the Federal Republic of Germany with the exception of its conflict of laws provisions of international private law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 10.2 If the Purchaser is a merchant ("Kaufmann") as defined in the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of the Seller in Willich. The same applies if the Purchaser is an entrepreneur within the meaning of § 14 BGB. In all cases, however, the Seller shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTC or a prior individual agreement or at the Purchaser's general place of jurisdiction. Priority statutory provisions, in particular those concerning any exclusive jurisdiction, shall remain unaffected.