

GENERAL CONDITIONS OF SALE

A. Brickwedde GmbH & Co. KG, Osnabrück – Lingen, Germany, Version 07/2020

I. Validity/Offers

1. These General Conditions of Sale ("Conditions") shall apply to all present and future contracts and for other services rendered. The conditions of the Buyer do not oblige us to anything, even if, after receipt, they are not specifically declined by us.
2. Our offers are subject to change without notice. Any agreements, especially oral collateral agreements, promises, guaranties and other assurances given by our sales staff shall be binding only once they have been confirmed by us in writing.
3. Any supporting papers belonging to our offers such as drawings, pictures, technical details, reference to standards as well as statements in advertising materials are not statements about quality, assurances about characteristics or guaranties in so far as they are not specifically characterized as such in writing.
4. Variances from offers, samples, test or preliminary deliveries in the items supplied are permissible as long as they are within the appropriate valid DIN/EN norms or other relevant technical standards.

II. Prices

1. Our prices are free our warehouse, excluding packaging, unless something else is agreed upon. Value Added Tax will be added.
2. If the items are to be delivered packaged, we will charge the packaging at our cost. We will take back the packaging delivered according to statutory provisions if it is returned to us freight free within a reasonable period of time.

III. Payment and Set-Off

1. Our invoices are due within 10 days with SEPA Direct Debit Mandate, beginning with the date of the invoice. The payment must take place within this period so that the amount involved is available to us at the latest on the due date. The Buyer will be in default at the latest 10 days after payment is due and without the need for a reminder.
2. Invoices for amounts under EUR 50.00 as well as for assembly, repairs, forms and tools are due immediately without deductions.
3. Counterclaims which are contested or have not yet been legally determined to be final and conclusive do not give the Buyer the right to withhold or offset payments.
4. When payment is not on time, at the latest by default, we are authorized to invoice interest at the level of the appropriate bank rate for overdraft credits, at a minimum, however, at 8 percentage points over the basic interest rate. A claim for further damages due to this delay remains reserved.
5. If it becomes apparent after conclusion of the contract that payment of our claims is in danger due to inability of the Buyer to pay, then we retain the rights under § 321 BGB (Objections Due to Uncertainty). We shall also be authorised to make use of rights under § 321 BGB (German Civil Code) and to make due any and all of our non statute-barred accounts receivable resulting from the same legal relationship, and we may revoke the collection power as set forth in clause V/5 of these Conditions. In addition, when payment is delayed we are entitled, after expiration of an appropriate extension period, to take back the goods delivered and to request that they not be sold or processed. This taking back shall not constitute a withdrawal from the contract. The Buyer can avoid all of these legal consequences by payment or giving security in the amount of our endangered receivables. The regulations of the insolvency law are not affected by the above.
6. Any cash discount agreed to always applies to the value of the invoice excluding freight and has a prerequisite that all amounts due by the Buyer have been paid at the time of the discount.

IV. Delivery Deadlines

1. Delivery deadlines and dates are considered to have been met when the goods have left our warehouse by the time due.
2. Delivery deadlines will be extended to a reasonable extent by occurrences relating to labor disputes, especially strikes and lockouts, as well as for unforeseeable difficulties outside of our control insofar as those difficulties are proven to have considerable influence on the manufacturing or delivery of the goods ordered. This applies as well when these circumstances affect our suppliers. We shall inform the Buyer immediately when such circumstances occur. These provisions apply accordingly to the delivery dates. If fulfillment of the contract becomes unreasonable for one of the parties, that party may withdraw insofar from the contract.

V. Retention of Title

1. All goods delivered by us remain our property (Reserved Property) until all claims arising from our business contacts have been settled, regardless of the origin of the claims and including future or conditional claims.
2. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of § 950 BGB without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions. When the Buyer processes, combines or mixes the reserved goods with other goods, we retain co-ownership in the new product in the relation of the invoice value of the reserved goods to the invoice value of the other goods produced. If our property disappears due to combination or mixture, the Buyer transfers to us already his property rights in the new goods or items in relationship to the invoice value of the reserved goods and will retain them for us without cost. The resulting co-ownership counts as Reserved Property in the meaning of clause V/1 of these Conditions.
3. The Buyer may re-sell the Reserved Property only in his normal business relations and to normal business conditions as long as he is not in arrears and only on the condition that the claims from the related sale are transferred to us according to clauses V/4 to V/6 of these Conditions. He is not authorized to use the Reserved Property for any other purpose.
4. The claims of the Buyer from the further sale of the Reserved Property count already as transferred to us. They count, in the same relationship, as security as do the Reserved Property. If the Reserved Property is sold by the Buyer together with other goods not sold by us, the assignment of the claim from the further sale is only in the amount of the sales value of the Reserved Property. With the sale of goods on which we have co-ownership according to clause V/2 of these Conditions, the assignment of the claim is in the amount of this co-ownership.
5. The Buyer is authorized to collect claims from the further sale until we exercise our rights of revocation at any time. This right of revocation will only be used in those cases listed in clause III/5 of these Conditions. At our request, the Buyer is required to inform his customers immediately about the cession to us – as far as we do not do it ourselves – and to provide us with the necessary information and details to accomplish collection.
6. The Buyer must inform us immediately about any seizure or other adverse actions on the part of third parties.
7. Should the value of the existing securities exceed the value of the secured claims by more than 50 %, we are required to release securities of our choice upon demand of the Buyer.

VI. Performance of Deliveries

1. When the goods are handed over to a forwarding agent or a carrier, at the latest, however, when the goods leave the warehouse or – with direct sales – the supplying plant, the risk is transferred to the Buyer in all cases, even those which are prepaid or free house deliveries. The Buyer must bear the responsibilities and costs of unloading. We shall obtain insurance only at the instruction of and at the Buyer's costs.
2. We are permitted to make partial deliveries in reasonable amounts. With goods manufactured to the Buyer's specification, deliveries are permitted which are up to 10 % more or less than the quantity ordered.
3. With call contracts, we are permitted to produce or have the total quantity produced at one time. Any changes desired cannot be considered after the order has been given unless this has been specifically agreed to. Unless there is a firm agreement, call up times and quantities can only take place according to our supply or manufacturing capabilities. Should the goods not be called according to the contract, after a reasonable additional period of time we are authorized to invoice them as having been delivered.

VII. Warranty Provisions

1. With immediate and justified notice of defects we can, at our choice, either repair the defect or replace the defective good ("remedy delivery"). If we fail to execute or refuse the remedy delivery, the Buyer may reduce the purchase price, or after setting a reasonable but unsuccessful date for the remedy delivery, may withdraw from the contract. If the defect is only minor, he has only a right of reduction.
2. We shall take over costs in connection with the remedy delivery in each individual case only insofar as there is a reasonable relationship to the purchase price. We shall not take over costs incurred due to the goods being brought to a location other than the headquarters or branch office of the Buyer unless such costs result from the contractual use of the goods.
3. Unless the Buyer gives us the possibility to convince ourselves of the defects, especially if, when requested, he does not make the defective goods or samples thereof available to us, he cannot claim that the goods are defective.
4. In accordance with clause VIII of these Conditions, additional claims are not acceptable. This applies in particular to claims for damages which did not occur to the goods themselves (consequential damages).

VIII. General Limitations of Liability and Statute of Limitations

1. We are liable for breach of contractual and non-contractual duties, especially those due to impossibility, delay, culpa in contrahendo and tortious acts – also those of our managerial staff and other personnel – only in those cases of wrongful intent or gross negligence. Our liability shall in any case be limited to the loss foreseeable at the time of the conclusion of the contract and to damages characteristic for the type of contract in question.
2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach of contract will endanger the contractual purpose; it shall neither pertain to such cases where our liability is compulsory under statutory law, either under the German Product Liability Act (Produkthaftungsgesetz), or with regard to damages to life, to the body or to health, or where we have willfully concealed any defects of the goods or guaranteed their absence. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.
3. Unless otherwise agreed to any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This limitation period shall also apply to such goods which, according to their normal purpose of use, have been used for constructional works related to real estate property and which have caused damage within this construction, unless this purpose of use has been agreed upon in writing. This limitation period shall not apply to our liability resulting from breaches of contract caused by our wrongful intent or by our gross negligence; neither shall it apply to any of the Buyer's statutory rights of redress. In cases of remedy deliveries, the limitation period shall not start again.

IX. Copyrights

1. We reserve our property and our copyrights of all cost estimates, drafts, drawings and other supporting papers. They may be made available to third parties only after our agreement. Drawings and other supporting documents relating to offers must be returned at our request.
2. So far as we have delivered items according to drawings, models, samples or other supporting documents supplied by the Buyer, he takes over the liability that protected rights of third parties have not been damaged. If third parties, with reference to protected rights, do not permit the manufacturing and delivery of those types of items, we are permitted – without being required to check the legal situation – to stop all further activities and to request damages when the Buyer is liable. In addition, the Buyer is responsible to immediately hold us free from all claims of third parties in this connection.

X. Test Parts, Forms, Tools

1. If the Buyer is required to provide parts to complete the order, they must be provided delivered free to the place of production in the required quantity, or with an additional quantity to cover any scrap, on time, without costs and free of any defects. If this does not occur, any resulting costs and other consequences will be for his account.
2. The construction of test parts, including the costs for forms and tools are for the account of the Buyer.
3. Property rights for forms, tools and other devices necessary for the construction of the ordered parts are according to the agreement made. Should these types of devices become unusable before the agreed upon quantities have been produced, the costs for replacement devices will be taken over by us. We promise to keep such devices available for a minimum period of two years after their last usage.
4. Our liability for tools, forms and other manufacturing devices provided by the Buyer is limited to the care which we would normally apply in our own affairs. The Buyer takes over the costs for maintenance and repair. Our safekeeping responsibility ends – independent of the ownership rights of the Buyer – at the latest two years after the last manufacturing using the form or tool.

XI. Place of Performance, Jurisdiction and Applicable Law

1. The place of performance for our deliveries is our warehouse. The place of jurisdiction between "merchants" (Kaufleute) is our principal office. We may, however, also sue the Buyer at his place of jurisdiction.
2. All legal relationships between ourselves and the Buyer shall be governed by the laws of the Federal Republic of Germany supplementing these Conditions, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods from 11.04.1980 (CISG).

XII. Applicable Version

In case of doubt, the German version of these General Conditions of Sale shall prevail.