

General terms and conditions Bermüller & Co GmbH

§1 General – Area of Validity

The following general terms and conditions apply to all offers and contracts for goods and services supplied by Bermüller & Co GmbH (hereinafter referred to as the Supplier). These general terms and conditions only apply to companies as defined in Art. 310 of the BGB (German Civil Code). If individual provisions of these terms and conditions should be totally or partly ineffective, this does not affect the validity of the remaining part or of the remaining provisions.

§2 Offers, Prices, Payment, Limitation Right of Retention/Offsetting

- (1) All offers are non-binding and subject to confirmation. Catalogues and price-lists do not constitute binding offers, and only the most recent versions of catalogues and price-lists are valid.
- (2) Specific properties of the goods to be supplied are only assured or guaranteed if these have been agreed in writing.
- (3) Unless otherwise expressly agreed, the prices are based on the price-lists applicable to the Purchaser. All prices apply from the Supplier's loading station and are exclusive of value added tax and packaging costs.
- (4) Invoices must be paid immediately upon receipt of the goods and without any deductions. The provisions of the BGB (German Civil Code) dictate when a purchaser shall be deemed to be in default of payment.
- (5) Any discounts must be agreed in writing. Discounts relate only to the amount shown on the invoice as being subject to such discount.
- (6) The Purchaser shall have no right of retention based on previous or other contractual relationships. Offsetting against counter-claims is not permitted unless these are undisputed or have been legally established. The right to assert a claim in a separate legal dispute remains unaffected.

§3 Delivery, Delay, Impossibility

- (1) The place of performance for deliveries from the Supplier is always the agreed loading station. Transport and packaging costs are borne by the Purchaser. If the goods are shipped, the Purchaser shall bear the costs and risk. The goods are packaged and delivered in a manner consistent with industry standards. Pallets and any special packaging will be charged separately.
- (2) The Supplier is entitled to make partial deliveries.
- (3) Delivery dates given by the Supplier are non-binding and shall be deemed approximate only. Delivery dates are only binding if they have been expressly agreed in writing as firm deadlines. If the goods are to be shipped, the delivery date shall be deemed to have been met by the Supplier if the goods were ready on time for collection by the shipping company.
- (4) Free delivery to the construction site or to the Purchaser's storage facility means delivery without unloading. A prerequisite for delivery is an access road that is suitable for heavy lorries with trailers. If the delivery vehicle is driven off suitable roads at the request of the Purchaser, the Purchaser shall be liable for any damage caused. The Purchaser must unload the goods properly and without delay. Waiting time shall be charged to the Purchaser at the standard hourly rates. If the Supplier unloads the goods at the request of the Purchaser, the costs for unloading will be charged separately at the standard rate. The Supplier accepts no liability for the unloading station. If employees of the Supplier (such as the driver) assist the Purchaser in unloading or storing the goods, they do so at the Purchaser's risk and not as agents of the Supplier.
- (5) If shipments are delayed due to circumstances under the Supplier's control, the Purchaser shall be entitled to claim compensation for each full week of delay of 0.5% of the net value of that part of the delivery that cannot be used as intended as a result of such delay – up to a maximum of 5% of such value – provided that the Purchaser can demonstrate satisfactorily that he has suffered loss as a result and that he forgoes any further compensation claims in respect of such delay. Further compensation claims relating to the delay are excluded except in the case of wilful misconduct or gross negligence, or if the delay breaches a material contractual obligation of the Supplier. In such cases, liability is limited to typical and foreseeable damage. Before resorting to the statutory rights that apply in addition to the lump sum compensation payment, the Purchaser must allow the Supplier a reasonable period in which to fulfil his obligations. If the Purchaser himself is in default with regard to an essential contractual obligation, the Supplier is entitled to extend the delivery period by the period of default.
- (6) Force majeure (such as natural catastrophes, public disturbances, war, fire, impoundment or labour disputes such as strikes or lockouts) entitles the Supplier to stop or postpone part or all of the delivery for the duration and to the extent of the disruption.

§4 Acceptance

Even if minor defects are evident, deliveries must be accepted by the Purchaser, without prejudice to his rights relating to defects. The costs incurred as a result of a delay in acceptance must be borne by the Purchaser. This applies in particular to storage or insurance costs. Irrespective of any evidence of loss on the part of the Supplier, the Purchaser must pay a lump sum of 0.5% of the order value for each week of the delay, up to a maximum of 5.0% of the order value.

§5 Warranty, Liability, Notice of Defects, Limitation Period

- (1) Immediately after receipt, the Purchaser must check the goods for completeness and obvious defects. Immediately after receipt of the goods, or within 10 calendar days of receipt at the latest, the Purchaser must notify the Supplier in writing of any obvious defects. Any hidden defects must be reported in writing to the Supplier immediately and in any case no later than 10 calendar days after their discovery. In order to comply with his duty to give notification of defects, the Purchaser must give a general description of the defect and the delivered goods, stating the order number and the time and date of delivery. Failure to give notification or failure to give notification within the specified period will result in the Purchaser's loss of warranty rights.
- (2) If the goods are defective, the Purchaser's warranty rights are limited in the first instance to demanding that the Supplier make good the defect by means of repair or replacement within a reasonable period. The repair or replacement is at the Supplier's cost.
- (3) If the repair or replacement is not made, the Purchaser is legally entitled to withdraw from the contract or to reduce the purchase price.

- (4) In accordance with the provisions of the law, the Supplier shall be liable insofar as wilful misconduct or gross negligence on the part of the Supplier or his agents can be proved. Insofar as no wilful breach of contract or culpable violation of a material contractual obligation is proved, the Supplier's liability for damages shall be limited to typical foreseeable damage.
- (5) This shall be without prejudice to liability for culpable loss of life, physical injury or damage to health; this also applies to statutory liability under the German Product Liability Act.
- (6) Unless stipulated otherwise above, further liability is excluded, regardless of the legal nature of the asserted claims; this applies especially to damage claims for negligence during conclusion of contract, or due to other breaches of duty, or due to tortious claims for compensation for damages.
- (7) The limitation period for claims arising from defects is 12 months, calculated from the date of delivery to the Purchaser.
- (8) If the Supplier also carries out work for the Purchaser, the statutory warranty regulations apply, in particular Part B of the VOB, Vergabe- und Vertragsordnung für Bauleistungen (German construction contract procedures). Notification of any obvious defects relating to work performance must be given by the person responsible for acceptance when accepting the works. If work defects become apparent at a later date, the Purchaser must notify the Supplier of these without delay and give the Supplier the opportunity to rectify or replace the work at the Supplier's expense. Insofar as the work carried out by the Supplier is based on work carried out by another of the Purchaser's contractors, the Supplier shall not be liable for such other contractor's work. This applies especially to work carried out on existing substructures constructed previously by third parties. The commencement of work on an existing substructure does not constitute acceptance of the substructure as defined in the VOB regulations.

§6 Retention of Title

- (1) All goods delivered shall remain the property of the Supplier until all payments arising from the business relationship between the Purchaser and the Supplier have been received in full. This also applies when individual or all of the Supplier's accounts receivable are included in a running account and the balance has been calculated and approved.
- (2) If there is a delay in payment or there is any other breach of contract on the part of the Purchaser, the Supplier is entitled to demand the return of the goods. The reclaim of supplied goods by the Supplier shall not constitute a withdrawal from the contract unless a statement to this effect is made in writing. Distraint of the goods supplied always constitutes a withdrawal from the contract. In the case of distraint or other interventions by third parties, the Purchaser shall notify the Supplier immediately in writing so that legal proceedings can be instituted under Article 771 of the ZPO (German Code of Civil Procedure). If the third party is unable to reimburse the Supplier for the judicial and extrajudicial expenses of a lawsuit pursuant to Article 771 of the ZPO (German Code of Civil Procedure), the Purchaser shall be liable for the losses incurred.
- (3) The Purchaser has the right to resell the delivered goods via a regular business transaction; in selling the goods, however, the Purchaser assigns to the Supplier any accounts receivable, to the value of the final invoice total (including VAT), which accrue to him from his customer or a third party as a result of the resale, regardless of whether the delivered goods were resold after further processing had been carried out or not. The Purchaser shall have the right to collect these accounts receivable even after they have been assigned. The Supplier still reserves the right to collect the accounts receivable himself; however, the Supplier undertakes not to collect the accounts receivable as long as the Purchaser continues to honour his payment obligations correctly and is not in arrears. If payments are in arrears, the Supplier can demand that the Purchaser supply him with the details of the assigned accounts receivable and of the debtors involved and provide him with all the information necessary for collection as well as the associated documentation, and that the Purchaser inform the debtors (third parties) of the assignment.
- (4) Processing or alteration by the Purchaser of the goods supplied is always undertaken on the Supplier's behalf. If the goods supplied are processed together with other items not belonging to the Supplier, the Supplier acquires co-ownership of the new goods in the ratio of the value of the goods supplied to the value, at the time of processing, of the other items processed. The same conditions shall apply to the new goods as to the goods for which the Supplier reserves proprietary rights.
- (5) If the goods supplied are inseparably mixed with other items not belonging to the Supplier, the Supplier acquires co-ownership of the new goods in the ratio of the value of the goods supplied to the value, at the time of mixing, of the other items.
- (6) To secure the Supplier's claims against the Purchaser, the Purchaser shall also assign to the Supplier the accounts receivable accruing to him from a third party as a result of the goods supplied being installed on land.
- (7) At the Purchaser's request, the Supplier undertakes to release the securities to which he is entitled, to the extent that their value exceeds the accounts receivable, covered by such securities and not yet paid, by more than 10%.

§7 Place of Jurisdiction, Applicable Law, Place of Performance

- (1) The place of jurisdiction is agreed as Nuremberg, Germany. However, the Supplier is also entitled to seek recourse in the courts responsible for the Purchaser's registered office.
- (2) German law shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods. Insofar as the Supplier also installs, lays or assembles the goods supplied, the contractual basis for this work shall be the most recent version of Parts B and C of the VOB (German construction contract procedures).
- (3) Unless otherwise agreed, the place of performance is the Supplier's registered office.



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