

General Terms and Conditions of Sale ("GTCS") of Bender GmbH & Co. KG

Status 01.03.2022

§ 1

Scope of application; exclusion clause

- (1) These GTCS apply to all business relationships with our customers if the customer is an entrepreneur (section 14 German Civil Code (*BGB*)), a merchant within the meaning of the German Commercial Code (*HGB*), a legal entity under public law or a public special fund. These GTCS apply in particular to contracts for the sale and/or supply of moveable goods irrespective of whether we have manufactured them or purchased them from distributors/suppliers.
- (2) Our GTCS apply exclusively. Any terms and conditions of the customers which conflict with, differ from or supplement these GTCS are hereby rejected and will not become an integral part of the contract, unless we have expressly consented to their application.
- (3) Unless otherwise agreed, our GTCS in the version which is current at the time of the customer's order will apply as a framework agreement (section 305 (3) German Civil Code (*BGB*)) also to any subsequent contracts within the meaning of paragraph (1) with the same customer without us having to refer to our GTCS again.

§ 2

Conclusion of contract; content of contract and proof; written form; no guarantees; assumption of risk; vicarious agents

- (1) Our offers are non-binding and subject to change unless they are expressly marked as binding, or they state a specific deadline by which the offer must be accepted.
- (2) The customer's order is deemed to be a binding offer to conclude a contract (unless it is a case of retention pursuant to paragraph (1) sentence 1; in this case the customer's order is the binding acceptance of our offer). Unless otherwise indicated in the customer's offer, we may accept it within 10 working days of receipt.
- (3) Our acceptance will be confirmed in writing (e.g., by our order confirmation or after we have issued notice that the goods are ready for collection/dispatch). The content of the contract is determined by the content of such statement. Any statements or information from the customer after the contract has been concluded which are of legal relevance (e.g., deadlines, reminders, notices of defects, statements concerning rescission or reductions) are only valid if they comply with the written-form requirements.
- (4) Telefax or email, in each case unsigned (text form) are also sufficient to fulfil the written form requirement. This does not affect statutory written form requirements.
- (5) Any individual contractual agreements will always take precedence over these GTCS (section 305b German Civil Code (*BGB*)). If proof is required of their content, subject to proof to the contrary, any written arrangement, or, if there is no such written arrangement, any written confirmation from us will be authoritative.
- (6) Apart from guarantees and/or procurement risks expressly assumed as such in the contract, there are no guarantees, and no risks are assumed. Our distributors/suppliers are not vicarious agents within the meaning of section 278 German Civil Code (*BGB*).

§ 3

Reservation of rights; prohibition on reverse engineering; confidentiality

- (1) We reserve all title, copyright and property rights in all documents, materials, and other items (essentially, our offers, catalogues, price lists, estimates, plans, drawings, illustrations, calculations, product specifications, manuals, samples, models and other physical and/or electronic documents or information) which we provide to the customer. Reverse engineering is prohibited.
- (2) The customer may not make the aforementioned items or their content available or disclose them to third parties or their own employees who are not involved, nor may it exploit, reproduce, or modify them. The customer must treat them as confidential and use them solely for the contractual purposes and must return them to us in full at our request and destroy/erase any copies (including electronic copies), provided it no longer needs them to comply with statutory retention obligations or to execute the contract. At our request, confirmation must be provided stating that the items have been returned in full or destroyed/deleted and, where such confirmation is not provided, a written statement must be provided stating which items are still required and the reasons why they are still required.

§ 4

"EXW Incoterms (2020)" and other modalities of delivery; transfer of risk; default with acceptance; cooperation; acceptance

- (1) Unless otherwise agreed, all of our deliveries are "EXW Incoterms (2020)" (based on dispatch from the warehouse/plant from which we ship). At the request and cost of the customer, the goods will be sent to another place of destination (sales shipment). Unless agreed otherwise, we are entitled to decide ourselves how the goods will be shipped (in particular, the transport company, shipping route and packaging).
- (2) The risk of accidental loss and accidental deterioration of the goods will pass to the customer, at the latest upon handover. However, in the case of a sales shipment, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay will already upon delivery of the goods pass to the freight forwarder, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, then this is decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services apply accordingly to an agreed acceptance. It shall be considered to be an equivalent to handover or acceptance, if the customer is in default with acceptance (*Annahmeverzug*).
- (3) If the customer is in default with acceptance, if it fails to cooperate as required or if our performance is delayed for other reasons for which the customer is responsible, we may demand compensation for any ensuing damage including additional expenditure (e.g., storage costs) which we incur.

§ 5

Prices; due date; payment; right of retention and set-off; default with payment; interest after due date

- (1) Our current net prices at the time the contract in question was concluded apply plus statutory VAT and any other fees or

charges under public law. These prices are quoted "EXW Incoterms (2020)" (see § 4 (1)).

- (2) We reserve the right, after due notice to the customer and prior to carrying out delivery of the goods, to increase the price of the goods as necessary due to general external price increases beyond our control (such as exchange rate fluctuations, currency regulations, changes in customs rates, significant increases in material or manufacturing costs) or due to changes in distributors and ensure we will reduce the price if external costs (such as customs duties) are reduced or eliminated. In all other respects paragraph (1) applies.
- (3) (a) Our invoices are to be paid within 14 calendar days after the goods have been delivered and the invoice has been received. Delivery also means receipt by the customer of our notice that goods are ready for collection (we can send the invoice along with such notice) or – if delivery of the goods has been agreed – handover of the goods to the party responsible for transport. If and to the extent that it has been agreed that the goods must undergo acceptance or if we are required to assemble or provide a similar service (e.g., mounting, fitting, installation, commissioning, set-up, adjustment), the payment deadline pursuant to sentence 1 does not apply until these steps have also been completed.
- (b) All payments must be made without deductions and in euros (EUR) by bank transfer to the account specified in our invoice. The date on which the payment is credited to the bank account determines whether the payment deadline has been met.
- (4) The customer is automatically in default when the deadline for payment expires. During default, interest will accrue on the purchase price at the statutory default interest rate. The statutory flat-rate default fee will be added. We reserve the right to assert further default damage and – in relation to merchants – statutory interest on arrears (sections 352, 353 German Commercial Code (*HGB*)).
- (5) The customer will only be entitled to set-off claims or to assert a right of retention insofar as the respective counterclaim is undisputed by us or has been declared final and absolute.
- (6) If after conclusion of the contract it becomes apparent (e.g., by filing for insolvency proceedings) that our claim to the purchase price is jeopardised by the customer's inability to pay, we will be entitled to refuse performance in accordance with the statutory provisions and – if necessary, after setting a deadline – to rescind the contract (section 321 German Civil Code (*BGB*)). We have the right to declare immediate rescission from contracts covering the production of non-fungible items (custom-made items); the statutory provisions regulating cases where there is no need to set a deadline remain unaffected.

§ 6

Delivery dates; force majeure and default by our suppliers; part-performance; our statutory rights; liability in the event of default and impossibility

- (1) The delivery times or dates which we indicate for supplies and services (delivery dates) are always only approximations unless a fixed delivery date is expressly promised or agreed.
- (2) A delivery date for the supply of goods is deemed to have been met if the customer has received our notice that goods are ready for collection by that date or – if delivery is agreed – we have handed over the goods to the party responsible for transport or could have handed them over in the event the party responsible for transport does not appear at all or not in due time.
- (3) If we can see that a delivery date cannot be met, we will inform the customer accordingly without undue delay and provide the expected new delivery date.

- (4) (a) Where performance is impossible or delayed, we are not liable to the extent that this is attributable in each case to force majeure or another occurrence that was unforeseeable when the contract was concluded and for which we are not responsible (force majeure; e.g. including without limitation any disruption to operations, fire, natural disasters, epidemics, pandemics, weather, flooding, war, insurgency, terrorism, transport delays, strikes, lawful lockouts, shortage of staff, energy or raw materials, delays concerning necessary official permits, official/sovereign measures).
- (b) Failure of our distributors to supply us correctly or in time will also constitute an occurrence of this type if we are not responsible for it in each case and if, at the time the contract with the customer was concluded, we had entered into congruent substitute transactions with our respective distributors. This also applies if we enter into such substitute transactions without undue delay after concluding the contract with the customer.
- (c) If we become aware of an occurrence within the meaning of paragraph (a) or (b), we will inform the customer without undue delay. Our delivery dates are extended/adjusted automatically by the duration of the occurrence, plus reasonable start-up time. If such occurrences make it substantially more difficult or impossible for us to provide performance and are not only of temporary duration, we may rescind the contract.
- (5) Delivery dates are extended automatically to a reasonable extent if the customer does not fulfil its contractual duties (including unwritten duties to cooperate) or obligations in good time. In particular, it must provide us with any documents, information, and objects to be provided by it in good time and in the correct format and fulfil any technical, structural, personnel and organizational requirements for the installation of the goods or similar services.
- (6) (a) We are entitled to render part-performance, if (aa) part-performance is suitable for the customer's contractually intended use, (bb) rendering of the remaining performance is secured and (cc) the customer does not face significant additional costs due to the part-performance or we confirm that we will bear such costs.
- (b) If, through no fault of our own, our delivery capacities are not sufficient for the timely, complete fulfilment of all open, equal-ranking orders from our customers we are entitled to allocate our delivery capacities proportionally among these orders.
- (7) This does not affect our statutory rights, particularly rights concerning exclusion of our duty to perform (e.g., because performance and/or subsequent fulfilment is ultimately or temporarily impossible or cannot reasonably be expected of us) or rights regarding default on the part of the customer in respect of acceptance or performance.
- (8) If we fall into default with a delivery or service or if for whatever reason it becomes impossible for us to provide such delivery/service, any liability for damages is limited as set out in § 10 below.

§ 7

Retention of title

- (1) We reserve title in the goods sold until all our current and future claims from the purchase agreement and any ongoing business relationship ("**Secured Claims**") have been paid up in full.
- (2) The goods which are subject to retention of title may not be pledged to third parties or assigned as collateral until the Secured Claims have been paid in full. The customer must inform

§ 8

Warranty for defects etc.

- us without undue delay in writing if an application is made for the opening of insolvency proceedings or if third parties (e.g., by way of seizure) have access to the goods belonging to us.
- (3) The customer will keep the reserved goods on our behalf free of charge. The customer will handle them carefully and insure them at its own cost against fire damage, water damage, theft and other loss or damage at reinstatement value. If maintenance, servicing, inspection, or similar work is required on the goods (this does not include any performance or supplementary performance to be rendered by us) the customer must carry this out or have it carried out in a timely and professional manner at its own expense.
 - (4) If the customer's conduct is in breach of the contract, in particular if the customer does not pay the purchase price due, we are entitled, in accordance with the statutory provisions, to rescind the contract or/and demand return of the goods on grounds of retention of title. The demand for return does not at the same time include the declaration of rescission; we are in fact entitled to only demand the return of the goods and to reserve the right of rescission. If the customer does not pay the purchase price due, we may only assert these rights if we have previously set the customer a reasonable deadline for payment and such deadline has passed without success or if setting such deadline is not required under the statutory provisions.
 - (5) Until revoked in accordance with (c) below, the customer is entitled to sell on and/or to process the goods subject to retention of title in the ordinary course of business. In such cases, the following provisions apply.
 - (a) The retention of title also extends to those products which are the result of processing, mixing, or combining with our goods at their full value, whereby we will be considered the manufacturer. If goods are processed, mixed, or combined with the goods of third parties and the ownership right of the latter still exists, we will acquire co-title in such processed, mixed, or combined goods in proportion to the invoice value. In other respects, the same will apply to the processed product as to the goods delivered subject to the retention of title
 - (b) The customer hereby assigns to us as security any receivables against third parties resulting from the sale of the goods or the product in total or in the amount of our co-ownership share, if any, pursuant to the preceding paragraph. We accept such assignment. The customer's obligations set out in paragraph 2 will also apply in respect of the assigned claims.
 - (c) In addition to us, the customer will still be authorized to collect the claim. We undertake not to collect the claim as long as the customer meets its payment obligations towards us, there is no impairment in its ability to pay and we do not assert the retention of title by exercising a right pursuant to paragraph 4. However, if this is the case, we may demand that the customer notifies us of the claims assigned and their debtors, that it provides us with all data required to collect the claims, the associated documents and notifies the debtors (third parties) of the assignments. Furthermore, in this case we are entitled to revoke the customer's authority to further sell on and process the goods subject to retention of title.
 - (d) If the realisable value of the securities exceeds our claims by more than 10 %, we will release the securities at our discretion on request by the customers.
- (1) The statutory provisions apply to the customer's rights in the event of material defects and defects of title (including incorrect delivery/insufficient quantities, faulty assembly or similar services or faulty instructions) subject to deviating or supplementary provisions in these GTCS.
 - (2) We exclusively warrant that the goods have the quality expressly agreed upon conclusion of the contract and are suitable for the use expressly agreed upon in the contract (e.g., in the product specifications or in the product description).
 - (3) There will be no claims for defects in the event of only slight deviations from the agreed quality, of only slight negative impact on use, of natural wear or damage that occurred after the transfer of risk as a result of faulty or negligent treatment, excessive use, unsuitable operating resources, faulty construction work, unsuitable building land or that arise owing to special external influences that are not stipulated under the contract, or in the event of non-reproducible software errors. Likewise, if inappropriate modifications, fitting/removal, or maintenance work are carried out by the customer or third parties, there will be no claims for defects for these or any consequences.
 - (4) Our goods and services must only comply with the statutory requirements applicable in Germany. The customer is responsible for the suitability of the goods and services ordered for its technical, structural, and organizational conditions and purposes.
 - (5) (a) Unless it has been expressly agreed that acceptance must take place, the customer must inspect the goods delivered in accordance with sections 377, 381 (3) German Commercial Code (*HGB*) without undue delay after delivery to it or to a third-party designated by it and report any defects to us without undue delay. The provisions in this paragraph (5) also apply. Section 442 German Civil Code (*BGB*) remains unaffected.
 - (b) Such notification must be in writing/text form (see § 2 (4)) and, in the interest of time, must be made by email or fax. Notification is deemed to have been made without undue delay if it is sent within (aa) five working days after delivery (section 377 (1) German Commercial Code (*HGB*)) or (bb) – if the defect was not apparent during inspection after delivery (section 377 (2) and (3) German Commercial Code (*HGB*)) – three working days after the defect has been detected.
 - (c) Inspection after delivery may not be limited to outward appearance and delivery documents. It must also adequately cover the quality and functionality and adequate sampling. For goods intended for fitting, installation or other processing, the inspection must precede these steps; the customer is responsible for refraining from these steps if defects are found.
 - (d) If the customer does not carry out a proper inspection or issue proper notice of defects, this will exclude any warranty obligation or liability which we may have in respect of the defect concerned. None of our statements, acts or omissions is to be deemed a waiver of the requirements and legal consequences under sections 377, 381 (2) German Commercial Code (*HGB*) and/or this paragraph (5).
 - (6) Acceptance without reservation despite the customer having knowledge of defects also results in loss of the claims for compensation referred to in sections 634 no. 4, 437 no.3 German Civil Code (*BGB*). This does not apply where we warrant

that the goods have specific attributes or maliciously fail to disclose a defect.

- (7) The customer must allow us the time required and give us the opportunity to review the complaints and provide subsequent fulfilment. Goods which are the subject of a complaint must be made available to us for inspection purposes or we must be given access to them.
- (8) We will bear or reimburse the expenses required for inspection and subsequent fulfilment (in particular transport, travel, labour, and material costs and, if applicable, removal and fitting costs) in accordance with the statutory provisions if there is actually a defect. Inspection and subsequent fulfilment do not, however, include removal of the defective item or fitting of the defect-free item if our original obligations did not include fitting. If a customer complaint proves to be unjustified, we can demand reimbursement of our costs incurred due to the complaint (in particular, for inspection and transport) unless the customer was not able to recognize the lack of justification.
- (9) In the event of a defect, we are entitled and obliged, at our discretion and within a reasonable period of time, to remedy the defect (rectification) or deliver a defect-free item (replacement delivery). The customer must return items which have been replaced in accordance with the statutory provisions.
- (10) If subsequent fulfilment is impossible or has failed or if the customer has set a reasonable deadline for subsequent fulfilment and such deadline has expired without success or if there is no statutory obligation to set a subsequent deadline, the customer may decide either to rescind the contract or reduce the purchase price. However, the customer may not rescind the contract if the defect is insignificant.
- (11) The customer can only rescind or terminate the contract owing to a breach of duty which is not attributable to a defect if responsibility for the breach of duty lies with us; in all other respects the statutory provisions apply. The customer does not have a free right to terminate the contract, (particularly not in accordance with section 650, 648 German Civil Code (*BGB*)).
- (12) Claims for compensation are only possible subject to § 10 below.

§ 9

Warranty specifically for freedom from industrial property rights and copyrights of third parties

- (1) In accordance with this § 9, we warrant that the goods are free of industrial property rights or copyrights of third parties in the countries of the European Union and countries in which we manufacture the goods or have them manufactured. Each party will inform the other without undue delay in writing if claims are asserted against it owing to the infringement of such rights.
- (2) Claims of the customer arising from infringement of third-party property rights or copyrights are excluded if the infringement is attributable to an instruction issued by the customer, a modification initiated by the customer or use of the goods by the customer in a manner which is inconsistent with the contract.
- (3) If the goods infringe an industrial property right or copyright of a third party we will, at our discretion and at our cost, modify or replace the goods so that the third-party rights are no longer infringed, but the goods continue to satisfy the contractually agreed functions, or procure the right of use for the customer by concluding a license agreement. If we do not manage to do this within a reasonable period, the customer may rescind the contract or reduce the purchase price by a reasonable amount.
- (4) Claims for compensation are only possible subject to the following § 10.

§ 10

Liability for damages

- (1) Unless otherwise set out in these GTCS, we will be liable for a breach of contractual and non-contractual duties as provided for by statute.
- (2) We have unlimited liability – regardless of the legal reason – for compensation for losses based on wilful (*vorsätzlich*) or grossly negligent (*grob fahrlässig*) breach of duty on our part or by any of our legal representatives or vicarious agents.
- (3) In the event of a merely simple or slightly negligent (*einfach oder leicht fahrlässig*) breach of duty by us or one of our legal representatives or vicarious agents (subject to a milder level of liability pursuant to statute, e.g., for diligence in our own matters or for insignificant breaches of duty) we are only
 - (a) – fully liable – for resultant losses arising from injury to life, limb, or health;
 - (b) for losses arising from a breach of material contractual duties. Material contractual duties are those duties which are essential for proper performance of the contract and on the fulfilment of which the customer regularly relies and is entitled to rely. In such cases, however, our liability is limited in amount to losses which are typical of this type of contract and which were foreseeable at the time the contract was concluded.
- (4) The liability limitations pursuant to paragraph (3) do not apply if we have fraudulently concealed a defect, provided a guarantee on condition or quality, or assumed a procurement risk. This has no effect on any mandatory statutory liability, including without limitation under the German Product Liability Act (*ProdHaftG*).
- (5) If our liability is excluded or limited, this also applies to any personal liability of our governing bodies, statutory representatives, employees, staff, and vicarious agents.
- (6) Subject to all further requirements concerning the customer's liability and our liability, the customer may only assert contractual penalties or liquidated damages owed by the customer to third parties in connection with goods delivered by us if it has been expressly agreed with us or if the customer pointed this risk out to us in writing before we entered into the contract with it.

§ 11

Statute of limitations

- (1) Notwithstanding section 438 (1) no. 3 German Civil Code (*BGB*), the limitation period for all claims for quality defects and defects in title – including non-contractual claims – is one (1) year from delivery. This does not apply, however, in the event of an intentional or grossly negligent breach of duty, for losses arising from injury to life, body or health, in the event of fraudulent concealment of a defect and/or mandatory statutory liability; in these cases, and those in paragraph (2) below, the respective statutory limitation period applies. If acceptance has been agreed, the limitation period begins on acceptance.
- (2) If the goods are a building or an item which, in being used for its usual purpose, has been incorporated in a building and has caused the building to be defective (building material), the statutory limitation period pursuant to section 438 (1) no. 2 German Civil Code (*BGB*) will continue to apply. This does not affect further statutory special provisions regarding limitation either (in particular section 438 (1) no. 1, (3), section 444, and section 478 (2) as read with section 445b German Civil Code (*BGB*)).

§ 12

Information on measures under product safety law

If official measures are taken at or against the customer which affect goods delivered by us (in particular measures under

product safety law, such as an order for a recall or preliminary measures), or if the customer is considering such measures of its own (in particular, a report to a market surveillance authority, or a recall), it must inform us in writing without undue delay in each case. This also applies if the customer learns of such measures at or against its purchaser(s) which concern the goods delivered by us.

§ 13

Place of performance

The place of performance is the warehouse/plant from which we ship. This also applies to subsequent fulfilment. Insofar as we are contractually obliged to carry out mounting, assembly/fitting, installation or similar work at another location, the place of performance and subsequent fulfilment will be such location.

§ 14

Choice of law and jurisdiction

- (1) These GTCS and the contractual relationship between us and the customer are governed exclusively by the law of the Federal Republic of Germany ("FRG"). The UN Convention on the International Sale of Goods (CISG) and other international uniform laws do not apply.
- (2) If the customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law, a public special fund or has no general place of jurisdiction in the FRG, the exclusive place of jurisdiction for all disputes arising directly or indirectly from these GTCS or the contractual relationship between us and the customer or in connection with it will be our registered office in Grünberg; this also applies internationally. The same applies if the customer is an entrepreneur (section 14 German Civil Code (BGB)).
- (3) This provision has no effect on mandatory statutory provisions, in particular on the exclusive places of jurisdiction.