

General Terms and Conditions of Delivery and Service of Binder Engineering GmbH

The following conditions shall apply exclusively for all – also future – deliveries and services (hereinafter referred to only as deliveries) unless otherwise agreed in writing.¹ The customer's terms and conditions of business shall apply only insofar as we agree thereto in writing.

1 Offers

Our offers are non-binding. Contracts shall only be concluded as a result of our written order confirmation or delivery. Our employees are not authorised to enter into any verbal collateral agreements or to make any verbal commitments or to alter these General Terms and Conditions of Delivery and Service to our disadvantage. Technical data, figures, drawings, weights and dimensions that are part of the offer are binding only insofar as this is confirmed in writing. The right is reserved to modify designs. The customer shall be responsible for checking the usability of our product.

2 Delivery Period

The delivery period shall begin upon shipment of the order confirmation, however not before clarification of all order execution details and receipt of the documents and permits to be provided by the customer, as well as of an agreed deposit. The delivery period shall be deemed to have been observed if, prior to expiry of the stipulated period, the product has been placed at disposal in the respective plant or readiness for dispatch has been notified.

Change requests by the customer shall extend the delivery period appropriately until we have checked their feasibility and by the period necessary to implement the new specifications in the production process. Upon delay in delivery, should we, our legal representatives, or vicarious agents have acted with slight negligence, our liability shall be limited to max. 0.5% per completed week and to a total of max. 5% of the value of the order delivered late. The right to claim damages instead of delivery in accordance with paragraph 11 shall remain unaffected.

3 Force Majeure

Unforeseen and unavoidable events for which we are not answerable (e.g., in particular force majeure, strikes, lockouts, stoppages, difficulties in procuring materials and energy, transport delays, measures by authorities, as well as difficulties in obtaining permits, in particular import and export licenses) shall extend the delivery period by the length of the interruption and its effects. Same shall also apply should the obstacles occur at our upstream suppliers' or during an existing delay. Should the impediment not be of merely temporary duration, we shall be entitled to terminate the contract. If, as a result of the delay, the customer cannot be reasonably expected to accept the delivery, he may terminate the contract by sending us a written declaration of termination. Rights to claim damages shall be excluded in the cases stated in the above paragraph.

4 Partial Deliveries

We are entitled to make reasonable partial deliveries.

5 Shipment and Passage of Risk

For shipment, we choose, at our discretion, the safest and most inexpensive solution. The risk passes to the customer as soon as we hand over the goods to the transport company or, should shipment be delayed through no fault of ours, as soon as we have notified the customer of readiness for shipment and this even if we have also taken over other services, e.g., the shipping expenses or trans-

portation and installation by our own transport personnel. Should shipment be delayed through no fault of ours:

- we shall store the goods at the expense of the customer; in the case of storage in our respective works, we shall charge a monthly fee of at least 0.5% of the amount of the invoice for the stored delivery,
- after setting a reasonable period of grace and the fruitless expiry of same, we shall have the right to withdraw from the contract or to demand damages instead of the payment,
- the customer shall, in particular, bear the costs and risks arising from non-timely instructions and non-timely completion of the necessary formalities incumbent upon him.

At the latest, 60 days after notification of readiness for shipment, irrespective of the invoicing of the storage costs, we shall be entitled to invoice the goods against transfer of ownership by way of security.

6 Prices

The prices are understood to be ex our respective distribution point, excluding packaging, freight, insurance, and the value added tax applicable in each case at the time the invoice is issued. The Incoterms shall apply in the respectively valid and current version. Reasonable price increases may be made should the material and work costs taken as a basis for the calculation have increased considerably since the order was accepted.

7 Payments

Payments are to be made within 30 days from the date of the invoice without any deduction, free our payments office. Payments shall be deemed to have been made only up to the amount that we can freely dispose of at a bank. E-Invoices will be only paid with the associated certified signature. We shall accept cheques and bills of exchange only on account of payment: discount charges and expenses shall be borne by the customer. Same shall be payable immediately.

In case of delayed payment, we shall, without issuing a reminder, charge interest payable after due date at the rate of 8 percentage points above the basic interest rate, however, at least 10 %.

Should justified doubt arise as to the customer's ability to pay due to e.g., a sluggish mode of payment, arrears, protesting of cheques or bills of exchange, we shall be entitled to demand securities or cash payment concurrently against delivery. Should the customer not comply with this demand within a reasonable period of time, we may withdraw from the uncompleted portion of the delivery contract. The fixing of a time limit shall be superfluous should the customer be manifestly incapable of providing security, e.g., should application have been made for insolvency proceedings to be opened with regard to the assets of the customer.

The customer may only offset claims to the extent that the counterclaims are uncontested or have been upheld by a court of law. In case of contested complaints regarding the goods, he shall not be entitled to withhold or reduce the payment of due invoice amounts. Setting off against counter-claims of any type whatsoever shall be excluded.

8 Retention of Ownership

We retain ownership of the goods delivered until receipt of all payments and until the cheques and bills of exchange accepted based on the business relationship with the customer have been irrevocably credited.

¹ The above conditions shall not apply to business relationships between associated companies of Binder Engineering GmbH

Should a current account exist, the retention of ownership shall extend to the acknowledged balance.

Machining and processing of the goods subject to retention of title shall be effected for us as manufacturer without placing us under any obligation. Upon mixing and combining with other goods, we shall acquire co-ownership of the new goods at the ratio of the invoice value of the goods subject to retention of title to the other materials.

The customer may sell the goods subject to retention of title only in conventional business dealings and may neither pledge nor assign same as security. The customer shall be obliged to inform us without undue delay of any access by third parties. Costs incurred as a result of warding off an access shall be borne by the customer insofar as same cannot be exacted from the third party.

The customer shall be obliged to insure the goods subject to retention of title adequately at the new value against loss and damage, at his own expense. The insurance policy as well as proof of payment of the premiums are to be submitted to us upon request. The customer shall even now assign to us his claims from the insurance policies. As security, the customer shall even now assign to us all his claims arising from the further sale of the goods subject to retention of title to their full extent.

The customer shall be entitled to collect the claims assigned to us. The right to collect shall elapse should the customer be in arrears, should application have been made for insolvency proceedings to be opened or should he have stopped his payments. In such cases, the customer may also no longer further process the goods.

In the cases stated in the above paragraph, the customer shall be obliged to enable us to take back the goods subject to retention of title, to inform us of the claims assigned and of their debtors, to inform his customers of the claim assignments and to provide us with all the necessary information and documents to collect the claims. We shall be entitled to disclose the assignment vis-à-vis his customers. The taking back of goods subject to retention of title shall not be deemed to be a withdrawal from the contract. Should we announce withdrawal, we shall be entitled to utilize the goods freely.

Should the value of the securities exceed our claims by more than 10%, at the customer's request, we shall release securities to this extent according to our discretion.

9 Rights to Documents and Maintenance of Secrecy

Proprietary and industrial property rights to our drawings and other documents shall, in any case, remain with us. Same may not be made accessible to third parties.

10 Liability for Defects

Defects in the goods supplied are to be reported in writing without undue delay, at the latest, however, 8 days after receipt of the goods, in the case of hidden defects, at the latest 3 days after detection. Should these deadlines be exceeded, all claims and rights arising from liability for defects shall lapse. The statutory period of limitation shall amount to 12 months from the delivery of the goods. However, the guarantee shall expire, at the latest, 18 months after notification of readiness for shipment should said deadline expire prior to expiry of the goods delivery period.

In case of justified complaints, we shall, at our discretion, repair the goods or supply a replacement. Should same not take place within a reasonable period of time, should the replacement delivery exhibit defects, or should the repair come to nothing, the customer may, after fruitless expiry of a reasonable period of grace, demand a price reduction or – insofar as the defect is not insignificant – withdraw from the contract and, in accordance with para. 11, demand damages instead of performance. An extension or recommencement of the guarantee period shall not take place

due to the remedying of a defect.

The costs of supplementary performance incurred due to the fact that, after delivery, the purchased article has been brought to a place other than the business establishment of the customer, will not be borne.

The liability for defects of the seller shall apply only provided the assembly, operating and maintenance instructions are observed precisely. The liability for defects shall be excluded to the extent legally permissible in the case of improper storage, handling, maintenance or repair and normal wear.

Violation of the rights of third parties shall only be deemed to be a defect should said protective rights exist in the Federal Republic of Germany.

11 General Liability

Claims against us for damages – of any kind – shall be excluded should we, our legal representatives or vicarious agents have acted with slight negligence. This exclusion of liability shall apply neither in the case of physical injuries nor in the event of acceptance of a contractual guarantee or in the event of a violation of essential contractual obligations which jeopardize fulfilment of the purpose of the contract. At the same time, however, our liability shall be limited to the scope of the guarantee and/or, in the event of slightly negligent violation of essential contractual obligations, to the contractually typical and foreseeable damage. Claims in accordance with the product liability act shall remain unaffected.

It is expressly agreed that, beyond that, we shall not compensate for damage of any kind whatsoever, for consequential damage or for loss of profit. With the exception of claims arising from the liability for defects, from liability under the product liability act and liability based on injury to life, limb and health, claims for damages shall become time-barred one year after the customer has gained knowledge of the damage and his liability to pay compensation or should have gained knowledge of the damage without gross negligence.

Should the customer withdraw from the order without any reason or should he not fulfil the contract, we may demand 25% of the order amount as damages. The right of both parties to enforce a claim for verifiable deviating damage shall remain reserved.

12 Transport Packaging and Old Equipment

We shall take these back at the customer's expense unless the customer waives this option. Transport packaging and old equipment are to be returned clean, free of extraneous matter and sorted according to type. Otherwise the customer shall bear the additional expenses.

13 Place of Performance, Choice of Law, Venue

The place of performance for all services arising from the delivery contracts shall be our distribution point in each case and for payment, our place of business.

German law shall apply: the UN agreement on the international purchase of goods (CISG) shall be excluded.

The venue for all disputes arising from the underlying contracts shall be our place of business. However, we shall also have the right to file a suit at the customer's place of business.

All customer data base collected in the course of business remains the legal property of Binder GmbH and Binder shall exercise all rights and authority to include such data into its business relation process.

Should individual provisions of these Terms and Conditions of Delivery and Service be ineffective in whole or in part, the other provisions shall remain effective.