

General terms of delivery and payment:
Industrieschilderfabrik Becher GmbH

1 Scope of application

- 1.1 These terms of sale apply to companies, legal entities under public law and special funds under public law.
- 1.2 Our goods and services are performed exclusively based on the following terms.
- 1.3 Terms of business of the partner which are not expressly accepted by us have no validity.

2 General provisions

- 2.1 The contractual partners shall promptly provide a detailed confirmation in writing of any verbal agreements.
- 2.2 Orders only become binding with our order confirmation.
- 2.3 The information and pictures contained in brochures and catalogues are approximate values customarily used for the industry, unless they have been expressly specified by us as binding.

3 Long term and call-off contracts, price adjustment

- 3.1 Contracts with unlimited periods can be terminated with a 6-month period of notice.
- 3.2 Should there be a significant change to the costs of labour, material or energy in the case of long-term contracts (contracts with a period of more than 12 months and contracts with unlimited periods), the arranged price can be adapted commensurately, according to the influence exercised by these cost factors.
- 3.3 Should a binding order quantity not have been arranged, we will base our calculation on a non-binding order quantity (target quantity) expected by the partner for a specific period. Should the partner accept the delivery of less than the target quantity, we shall be entitled to raise the unit price appropriately.
- 3.4 In the case of goods ordered on a call-off basis complete delivery must be taken within 12 months after order confirmation.
- 3.5 Provided nothing else is arranged, in cases of call-off order contracts we must notified by call-off of binding quantities at least 2 months before the delivery deadline.
Additional costs generated by our partner due to a tardy call-off or subsequent changes to the call-off concerning time or quantity shall be borne by him; in such cases our calculation shall be authoritative.

4 Confidentiality

- 4.1 Each contractual partner shall use all documents (this includes samples, models and data) and knowledge, which he obtains from the business relationship, only for the purposes jointly pursued and treat them confidentially in the same way he keeps his own similar documents and knowledge secret from other third parties, in cases where the other contractual partner designates them as confidential or has a clear interest in their confidentiality.
This obligation commences when the documents or knowledge are initially obtained and ends 36 months after the business relationship has ended.
- 4.2 The obligation does not apply for documents and knowledge which are a matter of general knowledge or which were already known to the contractual partner at the time of receipt, without him having been obliged to maintain confidentiality, or which are conveyed after that by a third party who is entitled to pass it on, or which were developed by the receiving contractual partner, without the use of the documents or knowledge of the other contractual partner that were to be kept confidential.

5 Drawings and descriptions

- 5.1 Should one contractual partner provide the other with drawings or technical documents concerning the goods to be delivered or their production, these shall remain the property of the contractual partner who provided them.

6 Samples and production materials

6.1 Provided nothing else is arranged, proportional production costs for samples and production materials (tools, moulds, templates etc.) shall be billed separately from the goods to be delivered. This also applies to production materials that must be replaced due to wear.

6.2 The costs for the maintenance and proper storage as well as the risk of damage or destruction of the production materials shall be borne by us.

6.3 Should the partner suspend or terminate work together during the time the samples or production materials are fabricated he shall bear all production costs that have arisen until then.

6.4 Tools, moulds, templates and other production materials fabricated by us remain our property and will not be handed out, even if the production costs have been proportionally invoiced to our partner.

6.5 Each text change on the ordered products necessitates the fabrication of new production documents (e.g. files and films). We will invoice at cost price each change made to the issued order by the partner.

7 Prices

7.1 Our prices are quoted in euros exclusive of sales tax, packaging, freight, postage and insurance.

8 Terms of payment

8.1 Provided nothing else was arranged, payment of all invoices is due within 30 days commencing on the invoice date. In cases of payment within 10 days, full payment in advance, or cash on delivery a 2 percent discount shall be granted, provided the customer is not in default in the payment of accounts for goods.

8.2 If we have indisputably delivered goods that are to some extent defective the partner shall nevertheless be obliged to make the payment for the non-defective portion, unless partial delivery is of no use to him. Furthermore the partner can only offset with counterclaims that have been established with legal effect or that are undisputed.

8.3 If the payment term is not met we shall be entitled to invoice interest on arrears at a rate amounting to that charged by the bank for an overdraft, but at a minimum of 8 percent above the respective base interest rate of the European Central Bank.

8.4 For the first warning we shall charge the partner five euros. For each additional warning fifteen euros.

8.5 In case of default of payment, after notifying the partner in writing we can cease the performance of our obligations until we receive the payments.

8.6 Checks and bills shall only be accepted on the basis of special agreements and only by way of provisional performance and subject to their being discountable. Discount charges shall be calculated from the date the sum of the invoice is due. We do not guarantee the punctual presentation of the bill of exchange and check, and for the protest of a bill of exchange.

8.7 If it becomes evident after concluding the contract that our payment claim is endangered by an insufficient ability to perform on the part of the partner, we can refuse performance and specify a commensurate period for the partner in which he can pay step by step or provide collateral in return for delivery. If the partner refuses or if the period expires fruitlessly we shall be entitled to withdraw from the contract and demand damage compensation.

9 Delivery

9.1 Provided nothing else is arranged, we deliver "ex works". Shipping costs and packaging are invoiced at cost price. Our notification of readiness for shipping or collection is authoritative for compliance with the delivery deadline or period.

9.2 The delivery period commences with the despatch of our order confirmation; the earliest, however, being the point in time at which we are in possession of all the information and approvals of the customer, should these be required. It shall be extended commensurately when the conditions of Para 16.1 apply.

9.3 Partial deliveries are permissible to a reasonable extent. They will be invoiced separately.

9.4 Within a tolerance of 10 percent of the overall order volume production-related excess or short deliveries are permissible. According to their extent this shall effect a change in the overall price.

10 Shipping and transfer of risk

10.1 Goods which have been announced as being ready for shipping must be promptly accepted by the partner. Otherwise we shall be entitled, according to our own choice, to send them or store them away at the expense and risk of the partner.

10.2 We shall choose the means and route of transport, should no special instructions be arranged.

10.3 Risk is transferred to the partner with the handing over to rail transport, the forwarding company or the shipper or with the commencement of storage, but at the latest when the goods leave the plant or storage, and even in the case that we have taken over the delivery.

11 Infringement of property rights

11.1 If the production of goods based on drawings, samples or other information from the partner violates the intellectual property rights of third parties, then the partner is obligated to release us from all claims.

11.2 We are entitled to produce advertising on our own behalf using the ordered products and reference the name and logo of the partner in the process.

12 Delay of delivery

12.1 Should we be able to foresee that the goods cannot be delivered within the delivery period we shall promptly notify the partner of this in writing, explain to him the reasons for this, and as far as possible specify the anticipated time of delivery.

12.2 Should the delivery be delayed due to a circumstance listed under Para 16.1 or due to an action or neglect on the part of the partner, an extension of the delivery period appropriate to the circumstances shall be granted.

12.3 The partner is only entitled to withdraw from the contract if we are responsible for not meeting the delivery deadline and he has set us an appropriate subsequent deadline which did not result in success.

13 Retention of proprietary rights

13.1 We reserve the right to ownership of the delivered goods until all claims arising from the business relationship with the partner have been fulfilled.

13.2 The partner is entitled to sell these goods in the ordinary course of business as long as he meets his obligations arising from the business relationship with us on time. However, he may neither pledge nor transfer ownership of the reserved goods as collateral. He is obliged to secure our rights if the reserved goods are resold on credit.

13.3 In the event of breaches of its duties by the partner, particularly in the case of delayed payment, we shall be entitled, after a reasonable period of grace allowed to the partner for performance has elapsed without result, to withdraw from the contract and take back the goods; this shall not affect the statutory provisions concerning cases where it is not necessary to allow a period of grace. The partner is obliged to surrender the goods.

We are entitled to withdraw from the contract should an application be submitted to begin insolvency proceedings regarding the assets of the partner.

13.4 With immediate effect the partner assigns to us as security all claims and rights deriving from the sale or any hiring, for which we may have given the partner permission, of goods over which we have rights of ownership. We herewith accept the assignment of rights.

13.5 Any processing or machining of the reserved goods is always performed by the partner on our behalf. Should the reserved goods be processed or inextricably combined with other articles that do not belong to us, we shall acquire joint ownership of the new object in a proportion of the invoice value of the reserved goods to the other processed or inextricably combined items at the time of processing or combination.

Should our goods be joined or inextricably combined along with other moveable articles to a uniform object and should the other object be viewed as the main object, the partner shall assign us proportional joint ownership, provided the main object belongs to him. The partner shall undertake to care for the property or joint ownership on our behalf. The same applies otherwise for the object produced through processing, joining or combining as for the reserved goods.

13.6 The partner shall undertake to notify us without delay of any third-party enforcement orders relating to the reserved goods and to any assigned claims or other collateral, and provide us with all the documents required for us to intervene. The same applies to impairments of any kind.

13.7 When the value of existing collateral exceeds the secured debt by a total of more than 20 percent, we shall be obliged, when requested by the partner, to release collateral in this respect at our discretion.

14 Material defects

14.1 The properties and condition of the goods shall be governed exclusively by the agreed-upon technical terms of delivery. In the event of our having to supply in accordance with drawings, specifications, samples and the like provided by our partner, the latter will take over the risk of suitability for the intended use.

The time of risk transfer as per para 10.3 is authoritative for matters concerning the compatibility of the goods with the contract.

14.2 Our goods comply with the statutory regulations as applicable in the European Union and the Federal Republic of Germany, e.g. the Regulation (EC) No. 1907/2006 (REACH), the German law concerning return and environmentally sound disposal of electrical and electronic equipment (Electronic Equipment Act) as the national implementation of the Directive (EC) No 2002/95 (RoHS) and the Directive (EC) 2002/96 (WEEE) and the End-of-life Vehicles Act as national implementation of the Directive (EC) No 2000/52.

We shall promptly inform the partner of any relevant changes to the goods, their deliverability, use options or quality, particularly related to the REACH regulation, and in individual cases we shall coordinate suitable measures with the partner.

14.3 We shall not be responsible for material defects which result through unsuitable or incorrect use, faulty assembly or commissioning by the partner or third parties, common wear or tear, faulty or negligent handling, nor for the consequences of incorrect changes or repairs undertaken by the partner or third parties or those carried out without our authorisation. The same applies to defects that even negligibly impair the value or usability of the goods.

14.4 Material defect claims shall lapse in 12 months. This does not apply insofar as the law compellingly prescribes longer periods, in particular for defects in a building construction and in cases of goods which, according to their typical use, were used for a building construction and were the cause of its unsoundness.

14.5 If an acceptance procedure for the goods or an initial sample testing had been agreed upon or if a proof had been presented for examination, objections shall be barred for defects which the partner should have been able to detect in a carefully performed acceptance procedure or initial sample testing or by a careful examination of the proof.

14.6 We are to be given an opportunity to determine the defects objected to. By request, rejected goods are to be promptly sent back to us; we shall assume the transport costs if the complaint about defects is justified. Should the partner not comply with these obligations or should he make changes to the goods already objected to without our approval, he shall lose any entitlement to claims for material defects.

14.7 In cases of justified complaints about defects made within the time limit, we shall correct/repair the goods objected to or deliver a replacement without defects, at our discretion.

14.8 Should we not comply with these obligations or should we not comply with them within a reasonable time frame according to the contract, the partner can set a final time limit for us in writing within which we are to comply with our obligations. Should this time limit expire fruitlessly, the partner can demand a reduction in the price, or withdraw from the contract, or carry out the necessary corrections or repairs himself or have them carried out by a third party at our expense and risk. Reimbursement of the costs is ruled out insofar as the expenses increase because the goods were brought to a different location after our delivery, unless this corresponds to the intended use of the goods.

14.9 The partner is entitled to assert statutory rights of recourse against us only to the extent that the partner has reached no agreements with his buyers which exceed statutory warranty claims. Moreover, the extent of the rights of recourse are governed by the final sentence of para 14.8.

14.10 Printing inks according to originals or samples are subject to negligible deviations in colour.

14.11 In cases of anodized colours negligible deviations are permissible within an ordered quantity and from production batch to production batch.

14.12 Slight burr formations occur in metal, plastic and composite material signs for technical reasons, and are not a defect.

15 Miscellaneous claims, liability

15.1 Provided nothing else is stated below, any other further claims of the partner against us are ruled out. This applies in particular to claims for damage compensation due to a breach of contractual obligations and to tortious acts. For that reason, we are not liable for damages which do not occur to the delivered goods themselves. In particular, we are not liable for lost profits or other damages to the assets of the partner.

15.2 The preceding limits of liability do not apply in cases of wilful intent or gross negligence of our lawful representatives or senior staff and in cases of culpable breach of material contractual obligations. In cases of culpable breach of material contractual obligations, we shall only be liable – except in cases of wilful intent or gross negligence of our lawful representatives or senior staff – for reasonably foreseeable damage typical for the contract.

15.3 Moreover, the limits of liability do not apply in cases in which, according to law on product liability, in cases of defects in the delivered goods, liability exists for damage to persons or assets for items used privately. They also do not apply in the event of harm to life, body or health and in cases where assured features are lacking, if and to the extent which the purpose of this assurance was to safeguard the partner against damages that did not occur to the delivered goods themselves.

15.4 Insofar as our liability is ruled out or limited, the same also applies for the personal liability of our employees, workers, contributors, lawful representatives and vicarious agents.

15.5 Legal provisions regarding burden of proof shall remain unaffected by this.

16 Force majeure

16.1 Force majeure, labour disputes, unrest, measures initiated by the authorities, failures in deliveries from our suppliers and other unpredictable, inevitable and serious events shall release the contractual partners from their performance obligations for the duration of the interruption and to the extent of its effect. This applies also if these events occur at a time in which the affected contractual partner is in default, unless he caused the default intentionally or due to gross negligence. Within the bounds of the reasonable, the contractual partners are obliged to promptly provide the necessary information and to adapt their obligations in good faith to the changed conditions.

17 Place of fulfilment, place of jurisdiction and applicable law

17.1 Insofar as the order confirmation does not state otherwise, the place where we have our registered office is the place of performance.

17.2 For all legal disputes including those in the context of any proceedings involving bills of exchange or checks, the place of jurisdiction shall be the place where we have our registered office. We are also entitled to lodge a complaint at the place where the partner has his registered office.

17.3 Only the law of the Federal Republic of Germany can be applied to the contractual relationship. Application of the UN Convention on Contracts for the International Sale of Goods of April 12, 1980 (CISG) shall be excluded.

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