

# General Terms and Conditions of Sale and Delivery (Issue 01.01.2022)

## § 1 General

1. Our General Terms and Conditions of Sale and Delivery apply to all deliveries and services in accordance with the contract concluded between us and the Customer.
2. Our General Terms and Conditions of Sale and Delivery are exclusively applicable; Customers' conditions which conflict with or deviate from our conditions are not recognised unless we have agreed to them expressly in writing.
3. Our General Terms and Conditions of Sale and Delivery apply only to transactions with business entities as per Section 14 of the German Civil Code [BGB], as well as legal entities under public law or special funds under public law.

## § 2 Entry into Contract

1. Our offers are without engagement and non-binding, unless otherwise agreed. Decisive for nature and scope is our order confirmation. We reserve the right to make technical changes as well as changes in form, colour and/or weight insofar as is reasonable.
2. The offer shall be regarded as accepted only when an order confirmation is issued or the goods are dispatched. The issue of a confirmation of receipt or the receipt of a telephone order do not constitute a binding acceptance. In the case of goods that have to be made to order, following our written confirmation the contract shall be regarded as having been entered into even if details of its execution which may affect price and delivery remain to be clarified. The right to make design and form changes during the delivery period is reserved, provided that the subject of delivery and its function and appearance are not fundamentally altered thereby. There will be no resulting change in price.
3. In respect of figures, drawings, calculations and similar documents, we reserve ownership and copyright. This likewise applies to such documents designated as "confidential". These documents may not be made available to third parties without our express prior approval.

## § 3 Prices and Terms of Payment

1. Unless otherwise specified in the order confirmation, our prices apply "ex works", excluding transport and assembly, which shall be invoiced separately. Costs for packaging, with the exception of small and spare parts, are included. The value added tax as required by law is not included in our prices; this tax will be shown separately on the invoice at the legal rate applicable on the date of invoicing.
2. Our invoices shall be due to be paid net (without deduction) within 30 days. The deduction of discounts requires a special agreement in writing.
3. Should the price of materials increase taxes or levies be increased after the contract has been concluded, we shall be entitled to adjust our prices accordingly if there are at least 4 months between entry into contract and intended delivery.
4. Should the Customer commission not only delivery but also assembly or similar services, these shall be invoiced by the hour unless a fixed rate has been agreed expressly. Our valid Terms and Conditions of Installation shall apply to all assembly services.
5. We are entitled, even in the case of conflicting Customer conditions, to set off payments against the Customer's previous debts. If costs and interest have already incurred, we are entitled to set off the payment against the costs, then to the interest and finally to the main service.
6. We are also entitled to make our remaining claims immediately payable and render the execution of all further services subject to an advance payment or provision of security, if we become aware of circumstances that call the solvency and the credit standing of the Customer into question, in particular in the event of default in payment. The right to claim further damages will remain unaffected.
7. During the delay, the Customer cannot invoke the right to possession. Any claim for return on our side during a delay on the Customer's side shall only be considered as withdrawal from the contract if we have specified this expressly in writing.
8. The Customer shall only have the right to offsetting if the Customer's counterclaims have been determined without further legal recourse, beyond dispute or if the counterclaims have been recognised by us. The Customer can only exert a right of retention if and when the counterclaim rests on the same contractual relationship.

## § 4 Place of Fulfilment, Transfer of Risk

1. Unless otherwise specified in the order confirmation, a delivery "ex works" (INCOTERMS 2020) has been agreed. The risk of accidental loss or deterioration of the goods purchased passes to the Customer upon hand-over of the goods to the shipping agent, the freight forwarder or the person or establishment otherwise appointed to execute the shipment. This shall likewise apply in case of partial delivery or if we have taken over other services (e.g. shipping or assembly).
2. Should the Customer be in default of acceptance, the risk of accidental loss or deterioration of the goods purchased shall pass to the Customer. Any storage costs incurred shall comply with § 5 No. 4 of these General Terms and Conditions of Sale and Delivery.
3. If carriage paid delivery of the goods has been agreed, the means of transport must be unloaded immediately by the Customer. Waiting times will always be at the Customer's expense. Direct delivery to site shall always be regarded as on truck on an even, drivable road. Unloading including transportation to the place of use or storage is the responsibility of the Customer who in the event of delay must bear the cost and risk of unloading, stacking, storage or return transport. The recipient acting on behalf of the Customer at the place of unloading shall be regarded as authorised to accept the load with binding effect.

## § 5 Period of Delivery

1. The period of delivery specified by us shall only begin after clarification of all technical questions.
2. Information on delivery dates shall be considered the expected periods of delivery and are always subject to correct and timely delivery by suppliers and/or other manufacturers to us. The Customer may only set a time limit for the supply/performance if the expected delivery date has been exceeded by more than three weeks. This time limit must be reasonable and must amount to a minimum of three weeks. Claims for damages due to non-compliance with an expected delivery date are excluded.
3. Delays in supply and performance as a result of force majeure or as a result of events which materially impede or prevent us from making delivery – including in particular subsequent material sourcing difficulties for which we are not responsible, interruption of operations, strikes, lockouts, official directives, etc., even if these affect our suppliers or sub-suppliers – will be notified to the Customer immediately. The same applies if we are unable to perform on time, fulfil or accept obligations to cooperate on time due to a pandemic, in particular the COVID 19 pandemic, and the resulting measures (in particular official directives such as plant closures, border closures, etc., high number of employees falling ill) - despite an agreed performance date. Those events entitle us to postpone our performance, duty to fulfil or accept obligations to cooperate thereof for the duration of the impediment and/or entitle us to withdraw from the contract either in whole or in part if the order is not yet completed. In the event of withdrawal, any compensating measures already performed by the Customer shall be reimbursed immediately. Further claims of the Customer, in particular claims for Damages, are excluded in this case.
4. Should the Customer be in delay of acceptance, we are entitled to store the goods at the Customer's risk and expense. For the corresponding storage costs, we can optionally demand reimbursement of the actually incurred costs or of a fixed rate of 5% of the invoice sum for each commenced month. This also applies to storage by us. The Customer has the right to prove less damage in the event of a claim to flat-rate damage reimbursement.
5. Should, after the time limit set by us has expired, the Customer refuse to accept the goods or declare to no longer want to accept the goods without entitlement to do so, we can also demand damage compensation due to non-fulfilment.
6. Partial deliveries are permissible to a reasonable extent.

## § 6 Reservation of Title

1. We reserve ownership of the goods until complete payment of all claims from the ongoing business relationship with the Customer. Should the value of the reserved goods exceed the claims to be secured from the ongoing business relationship with the Customer by more than 20%, we are obligated to release the reserved goods on Customer request. The selection of the securities to be released is at our discretion.
2. While retention of title is in effect, the Customer is obligated to treat the goods purchased with care and sufficiently insure them against fire, water and theft at their value when new and at the Customer's expense. Any claims asserted for damages by the Customer against the insurer or other third parties due to deterioration of the reserved goods are right now signed over to us at the amount of the invoice sum. Should maintenance and inspection work be required, the Customer shall perform said work regularly at the Customer's own expense. The Customer must inform us immediately and in writing of all access of third parties to the goods, in particular of all foreclosure and any damage to or destruction of the goods. The Customer must inform us of a change in possession of the goods as well as a change in the Customer's address immediately. The Customer must reimburse us of all damage and costs caused by a violation of this obligation and resulting necessary intervention measures to prevent access of third parties to the goods. In the event of access by third parties, the Customer must also provide us with the necessary help to exercise our rights.
3. The Customer is not permitted to pledge reserved goods nor assign them as security.
4. Processing or transformation of goods supplied subject to the reservation of title is always undertaken by the Customer on our behalf. Should the reserved goods be combined or processed with other items, the reservation of title shall continue for the processed or combined goods. If the reserved goods are processed or combined inextricably with items which are not our property, we shall acquire ownership of the new object in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used at the time of processing or combination. The resulting co-ownership rights shall be deemed to be reserved goods in accordance with these terms and conditions. If our goods are joined or combined inextricably with other movable items into a single object and the other object is to be considered the main object, the Customer shall concede proportionate joint ownership to us should the main object belong to the Customer. In the aforementioned cases, the Customer here and now assigns all ownership rights to the processed, joined, or combined goods to us. Instead of a transfer, the Customer shall hold the processed, joined, or combined object in safe custody on our behalf. For the object resulting from processing, use, or combination, the same applies in all other respects as for reserved goods.
5. The Customer is entitled to resell goods supplied subject to reservation of title by way of due and proper business transactions. The Customer here and now assigns all claims with all rights arising from the resale of the reserved goods to us in full. We accept this assignment. Should the Customer sell the reserved goods

## General Terms and Conditions of Sale and Delivery (Issue 01.01.2022)

– after processing/combination – together with goods not belonging to the Customer, the Customer here and now assigns to us the claims resulting from resale at the value at new of the reserved goods along with all ancillary rights. We accept this assignment right now. The Customer is entitled to collect this claim even after assignment. However, we reserve the right to collect the claim ourselves as soon as the Customer fails to properly meet payment obligations and enters into default, or reasonable doubt about the Customer's solvency and credit standing exists. On our request, the amount of the assigned claim, the person of the debtor and all other information required for collection must be provided, the corresponding documents be handed over and the debtor be notified of the assignment.

6. The right to further processing and resale ends with withdrawal from the contract.
7. During the Customer's standard business hours, we are at all times entitled to enter the offices and operating premises to check the reserved goods and to take possession of the reserved goods insofar as the Customer is unable to invoke rights to possession.

### § 7 Defect Claims

1. The Customer shall be entitled to claims for defect only if the Customer's duties to inspect and report pursuant to Section 377 of the German Commercial Code [HGB] have been duly complied with. In the event that complaints are not reported in due time and/or in due form, the goods shall be regarded as accepted.
2. For the delivery of objects, we are free to decide to affect supplementary performance either by repair or replacement. If supplementary performance fails, the Customer can at his choice demand a reduction, withdrawal or compensation. In the event of only minor defects the Customer has no right to withdrawal.
3. As a matter of principle, the nature of the goods purchased shall be defined solely by our order confirmation. Public statements, recommendations or advertisements by us or third parties do not constitute contractual statements as to the nature of the goods.
4. The period of limitation for defect claims is based on Section 438 of the German Civil Code [BGB] as long as no deviating time limits have been expressly agreed.
5. The Customer is not entitled to assign claims for material defects.

### § 8 Liability

1. We accept liability within legal provisions, provided the Customer asserts claims for damages that are based on intent or gross negligence. In the event of minor negligence, our liability is limited to predictable, typically occurring damage. We are not liable in the event of minor negligence of non-essential contractual obligations whose violation does not threaten the performance of the contract. This also applies to breach of duty by our legal representatives or vicarious agents.
2. Liability for negligent injury to life or limb or the impairment of a person's health remains unaffected from the above limitations of liability; this also applies to Customer claims according to the German Product Liability Act [Produkthaftungsgesetz].

### § 9 Data protection

1. The data of the Customer, especially our contact persons of the Customer, are processed in compliance with the European General Data Protection Regulation (Regulation (EU) No. 2016/679) and the German Federal Data Protection Act (new). This also includes processing in IT systems.
2. The Customer is obliged to comply with the provisions of the European General Data Protection Regulation and the respective national supplementary text (for Germany, e.g. the German Federal Data Protection Act) in die respective current form. The Customer shall comply with all obligations to provide information under data protection law. The Customer must inform us immediately in the event of a data protection incident and provide all necessary information for documenting and, if necessary, reporting the data protection incident by e-mail to [datenschutz@berner-torantriebe.de](mailto:datenschutz@berner-torantriebe.de).

### § 10 Concluding Provisions

1. The law of the Federal Republic of Germany shall apply. The UN Convention on the International Sale of Goods shall not be applicable.
2. To take legal effect, subsidiary agreements and amendments must be confirmed in writing. This likewise applies to any modification of the clause stipulating the written form.
3. Unless otherwise specified in the order confirmation, our headquarters are the place of fulfilment. The exclusive place of jurisdiction for all disputes arising from this contract shall be Bielefeld, Germany.
4. Insofar as individual terms of the contract including these General Terms and Conditions should be or become ineffective either in whole or in part, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by agreement of a clause that comes as close as possible to the intended purpose without being invalid. This also applies to any contractual gap.