

# Terms and Conditions of Business

Brema Marketing GmbH & Co. KG

## 1. Scope:

All present or future deliveries and services that we perform, including recommendations, consulting services and other additional services, are based exclusively on our Terms and Conditions of Business, without any separate, additional agreement being required in this respect. Deviations from these Terms and Conditions require our written confirmation. Our Terms and Conditions of Business are deemed to be accepted at the latest on acceptance of the goods supplied.

We shall not accept any terms and conditions of purchase that are at variance with our own Terms and Conditions of Business, even when we do not explicitly object to such terms and conditions.

All details in respect of weights and measurements, as well as all diagrams, descriptions, drawings, etc., are authoritative to an approximate extent only. We reserve the right to make design changes. Diagrams and drawings in catalogues are non-binding and are not constitutive for the contractually agreed condition of the goods. They do not substantiate a guarantee of either durability or condition.

## 2. Prices, freight basis:

Our prices and offers are non-binding until our confirmation of order has been sent. Unless a fixed price has explicitly been agreed, the price agreed upon is subject to adjustment in the event of cost prices rising.

Prices are stated in Euros as a basic principle. Value added tax at the applicable statutory rate shall be added to the invoice.

Deliveries shall be made when these can be slotted into the transport schedule, provided there are suitable access roads.

The Buyer shall be responsible for unloading the materials from container, wagon or truck loads.

## 3. Delivery times:

Delivery times must always be viewed as approximate only, unless binding written agreements have been concluded in this respect. Claims to damages due to late delivery shall not be accepted unless we bear compulsory liability by law.

Circumstances and events occurring to us or our suppliers, for which we bear no responsibility and which delay delivery, shall not lead to the provision of replacement goods, the payment of compensation, or to withdrawal from the contract of sale. A reasonable extension of term for the duration of the obstruction is deemed as agreed. Should the circumstances obstructing delivery last longer than eight weeks, then each of the parties shall be entitled to withdraw from the contract. Non-compliance with delivery dates shall not entitle the Buyer to refuse delivery. The latter provision shall not apply if the Buyer is not a registered business (a *Kaufmann*).

If there is a delay in delivery for which we bear responsibility, we must be granted a reasonable extension; on expiry of said extension, the Buyer may demand compensation for damages and/or withdraw from the contract if, by expiry of the deadline, the goods have not been delivered or notified as being ready for shipment. However, there shall be no right of withdrawal if we are not responsible for failing to deliver within the extended term as granted by the Buyer.

Delivery obligations and deadlines shall be suspended, without prejudice to our own rights deriving from customer default, as long as the Buyer defaults on acceptance of the goods or on other obligations, in particular with respect to its own duty to cooperate in the performance of deliveries and services, or as long as the Buyer exceeds any credit limit we may have granted. In such a case, the risk of accidental loss or accidental deterioration of the goods shall pass to the Buyer the moment it begins to default.

## 4. Shipment:

The goods are deemed to be delivered in accordance with the terms and conditions once they have been dispatched ex works or ex warehouse. Transportation risks shall pass to the Buyer as soon as we have delivered the goods to a forwarder, or to a transport company, or to our own or the Buyer's vehicles for the purpose of transportation. This principle shall apply to shipment both from our own place of business or from some other place, regardless of whether the destination is the Buyer's place of business or some other place.

In its own interest, the Buyer must arrange for any damage to the goods or short quantities to be confirmed in writing on receipt of the materials and goods, in order to protect its claims. We shall not bear any liability for either losses or damage.

A transport insurance policy shall be taken out only at the Buyer's express request and expense. Such request must be stated on every order. Any complaints or objections must be notified to us without delay.

If dispatch is delayed at the request of the Buyer, we shall have the right to set the Buyer a reasonable deadline for acceptance and, if said deadline expires to no avail, to demand immediate acceptance of the goods as well as compensation for the damages we incur as a result of the default.

## 5. Packaging:

The goods are transported in unpackaged state or in the type of packaging commonly used in the sector. If packaging marked as returnable and on loan is not returned to us carriage paid within 14 days, it shall be invoiced to the Buyer at cost price.

## 6. Terms of payment:

Invoices are payable without deductions within 30 days of the invoice date, under exclusion of any set-off or retention. The Buyer is not entitled to set-off counter-claims unless such claims are undisputed, acknowledged by us, or established as final and absolute by a court of law. We grant a 2% discount on the invoice total for payment in cash within ten days of the invoice date. If payment is made within ten days by direct debit on the basis of a direct debit order granted by the Buyer, we shall grant a 3% discount on the invoiced amount. Discounts shall not be granted unless all previously due invoices have been paid. We do not accept bills of exchange as payment. Credits against cheques are subject to receipt of funds, minus expenses, the value date being the day on which we can dispose of the counter value.

If payments are postponed, or the time allowed for payment is exceeded, interest shall be charged at a rate which is eight percentage points above the respective key interest rate of the European Central Bank, without a reminder for payment being required. We expressly reserve the right to assert additional claims to damages on account of such default. It is up to the Buyer to prove that the damages caused by default are lower.

As a basic principle, the Buyer is deemed to be in default on non-compliance with payment deadlines, without a reminder having to be sent to that effect. We have the right, without having to set an extension of payment term, to withdraw from the contract if it has not yet been fulfilled, and/or to demand damages in place of performance.

If, after conclusion of contract or during ongoing business relations with the Buyer, we gain knowledge of circumstances that cast doubt on the creditworthiness of the Buyer, we may demand immediate payment or collateral (in the form of a directly enforceable guarantee, a lien on real property, etc.), or withdraw from the contract.

In all events, it is agreed with the Buyer that our employees may enter the Buyer's business and warehousing premises in order to make an inventory of the reserved title goods (see Section 7

below). Said inventory forms the basis for recovery of goods by the Seller and for the Buyer's duty to return such goods. The valuation of reserved title goods and the credit note to be issued by the Seller shall be carried out on the basis of normal accounting principles.

As a basic principle, payments rendered shall be credited against the oldest outstanding invoice.

## 7. Retention of title:

Our deliveries are made exclusively with retention of title pursuant to the regulations in the German Civil Code (*Bürgerliches Gesetzbuch* – BGB), and subject to the following additional provisions: the goods sold to the Buyer shall remain our property until all our claims to payment have been settled in full. If the Buyer has a current account with us, the retained property is deemed to be security for the debit balance.

If the Buyer commits a breach of contract, in particular if it defaults on payment, we are entitled to take back the object of purchase; the Buyer is obliged to surrender said object. Our taking back the object of purchase does not constitute withdrawal from the contract unless we have expressly agreed to same in writing.

Until full payment has been rendered, any processing or incorporation of the reserved title goods is done on our behalf only, without commitment on our part. If the Buyer processes the reserved title goods in combination with other goods that do not belong to us, we acquire co-ownership of the new object in proportion to the value of the reserved title goods relative to the value of the other processed goods. The new object thus ensuing is deemed to be a reserved title good within the meaning of these provisions.

All receivables owed to the Buyer from reselling the reserved title goods, whereby such resale may only be effected within ordinary business operations, are hereby assigned to us, regardless of whether the reserved title goods are sold before or after processing. If the reserved title goods are sold in combination with goods that do not belong to us, the purchase-money receivable is assigned to us to the value of the reserved title goods only.

The Buyer is entitled to resell the reserved title goods only on condition that the Buyer declares to its customers that it retains ownership of the goods until payment has been made in full, and that the receivable arising from such resale is transferred immediately to us. In the case of goods that become a major component of a third party's real estate by incorporation, the Buyer hereby assigns to us its claims against the builder-owners to the amount of the purchase price for our reserved title goods. This assignment is limited in amount to that portion of the respective receivable equal to the purchase price of the goods procured from us by the Buyer, plus an additional 10% of said purchase price.

Only at our request does the Buyer need to inform its customers of our retention of title and of the assignment of its claims. Once all amounts owing have been paid in full, ownership of the reserved title goods devolves to the Buyer. The Buyer is then entitled to the claims to payment which it had previously assigned to ourselves.

If the value of the collateral provided exceeds the value of our claims by more than 20% in total, we are obliged to release such collateral, at our discretion, if so requested by the Buyer. The Buyer must inform us immediately about any levy of execution on the reserved title goods by sending us a copy of the bailiff's return. Until all amounts owed to the Seller by the Buyer have been settled, the Buyer is not permitted to pledge or assign any of its claims, in particular to banks, without the written approval of the Seller.

In the event that invoices are collected by a central receivables collection service involving a *delcredere* agreement, the reserved title property agreed upon with the Buyer shall devolve to the receivables collection agent if this has been agreed between ourselves and the receivables collection service/*delcredere* agent.

The right of the Buyer to hold possession of the reserved title goods shall become extinct if it fails to honour its obligations under this or another contract. In such a case, we shall have the right to take possession of the reserved title goods and to liquidate said goods as best possible by private sale or auction. After deduction of expenses, the proceeds shall be credited to the Buyer against the amounts it owes. Any surplus amount shall be paid out to the Buyer.

If the retention of title or assignment of claims is invalid under the governing laws where the goods are located, security which is equivalent at that location to said retention of title or assignment of claims shall be deemed as agreed between the Parties. The Buyer is obliged to take all action necessary to substantiate and/or maintain such rights of security.

## 8. Warranty and liability:

In the event that defective goods are delivered, we have the right to remedy such defects or to make replacement delivery, at our own discretion, within a 12 month warranty period. This provision shall not apply if longer warranty periods are prescribed by law. Essential expenses incurred in remedying defects shall be borne by ourselves. This commitment shall apply only on condition that transport, labour and/or material expenses are not increased by the delivery items having been brought to a different location than the place of performance.

If we fail to remedy the defect, or to make replacement delivery or to remedy any defects within a reasonable extension period granted to us by the Buyer, or if subsequent remedy is rendered impossible or refused by ourselves, then the Buyer shall have the right to withdraw from the contract or to demand a price reduction.

Defects in part-deliveries do not entitle the Buyer to cancel the entire order, or other orders that have been granted but not yet completed. Warranty claims may not be transferred to third parties without our consent.

No warranty claims shall be accepted if the Buyer or third parties have carried out modifications or repair work to delivery items in an improper manner.

Regardless of their legal basis, any further-reaching claims against us on the part of the Buyer, in particular claims to compensation for damages that have not been caused to the goods themselves, such as claims due to lost profits, consequential losses or other pecuniary losses, shall be excluded unless provisions are otherwise made in these Terms and Conditions; this limitation of liability shall not apply if we bear compulsory liability on account of deliberate action, gross negligence or a guarantee, or if a serious breach of contract has been committed, or if personal injury has been caused to life, body or health.

Complaints about defects of whatever kind must be lodged in writing without delay, at the latest within one week after receiving the goods. Defects that cannot be discovered within the latter period, despite the most meticulous checks being performed, must be notified immediately on discovery – at the latest, however, within one month after receiving the goods.

Liability for production errors shall be accepted only to the extent that replacements are provided by the supplier plants. At the request of the Buyer, we are obliged to assign to the latter any claims that we may have against our own suppliers.

## 9. Place of performance, place of jurisdiction:

The place of performance is the domicile of the supplying company. The place of jurisdiction for

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all claims between the Parties – also in cases restricted to documentary evidence, and debt recovery proceedings – is Bremen. However, we also have the right to institute court action against the Buyer at the domicile of its head or branch office.

## **10. Other terms and conditions:**

All legal relations between ourselves and the Buyer shall be governed exclusively by the laws of the Federal Republic of Germany.

If any provision in our Terms and Conditions of Business proves to be void, this shall not cause the Terms and Conditions as a whole to be void. The invalid provision must then be interpreted in such a way that the intended legal and business purpose of the provision is achieved.

Customer data are stored by us to the extent that is necessary for achieving the contractual purpose.

Status: 01.08.2002

The above Terms and Conditions are hereby acknowledged:

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Legally binding

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Company stamp

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signature