

## **Standard Business Conditions**

### **§ 1 General**

These terms and conditions apply only for business dealings with enterprises; for consumers, the statutory regulations on the sale of goods apply.

The following conditions apply exclusively for all our offers, sales and deliveries. Upon placing an order, the ordering party (hereafter orderer) declares that they accept these terms unconditionally. Deviating terms are only valid after mutual agreement and they must be in written form. Amendments to individual conditions have no effect on others. Contradictions offered by the orderer based upon the validity of their own standard business or ordering conditions are not valid. Rights and responsibilities contained in the sales contract may not be transferred to others without our explicit permission. Pending an agreement to the contrary, these terms and conditions are valid for all current and future commercial transactions, including individual purchase orders placed within existing business relationships in the absence of specific references.

These conditions are also in effect when a delivery is received and accepted. The most current version of these conditions can be found and downloaded at [www.burkert.com](http://www.burkert.com).

### **§ 2 Offers**

Offers are always non-binding, even when this has not been specifically agreed to.

### **§ 3 Orders**

Orders are only considered accepted after they have been confirmed by us in writing. If delivery is made immediately without prior confirmation, then the invoice also serves as order confirmation.

### **§ 4 Prices**

Our prices are subject to change without notice and are valid from the point of delivery excluding packing, postage, shipping and forwarding charges, insurance, customs and assembly. In the event that the costs of wages, raw materials, freight forwarding, taxes, customs, charges or other financial burdens increase or if new burdens take effect between contract signing and delivery, we shall be entitled to impose a fair and reasonable price increase to the extent allowed by law. The amount of goods ordered is decisive for such calculations.

### **§ 5 Delivery**

We reserve the right to set a delivery time for each individual order. The delivery time is also considered met when the buyer is notified in time that the goods are ready for dispatch, even if dispatch is made impossible through no fault of the seller. Partial deliveries may not be refused by the orderer. A commitment to fulfil specified delivery dates can only be made if the production cycle is unimpeded. We reserve the right to suspend or cancel delivery obligations due to the effects of force majeure events, production breakdowns, strikes, lockouts, government measures and/or lack of raw materials as well as other unpredictable

conditions at our facilities or those of our suppliers at the time of production. Failure to comply with confirmed delivery terms is not a basis for damage claims or order cancellation. We are allowed, but not obligated to subsequently deliver non-delivered items. Liability claims arising from non-compliance or delayed delivery are not allowed. Liability for the goods becomes the responsibility of the orderer upon dispatch from the factory or notification of readiness for dispatch. In the absence of specific instructions, the shipping route and method are chosen using our best judgment and we do not assume liability for the least expensive and most expedient shipment method. Shipping is always at the risk of the orderer, including free-of-charge delivery and in cases of ownership retention. Unless otherwise agreed, packaging is chosen by us. It is calculated according to valid pricing. In the event of a free-of-charge return shipment of goods in good condition and within four weeks, two-thirds of these costs will be credited.

## **§ 6 Complaints**

Notice of defects regarding weight, amount, goods or the makeup of the goods can only be considered when they are reported to us in writing immediately after being discovered, but no later than one week after receipt at the destination. This does not apply to conditions excluded in our conditions of sale. Defects that cannot be detected by immediate examination within this time limit are to be reported immediately after discovery.

## **§ 7 Claims based on defects**

We guarantee that our products are free from manufacturing and material defects at the time of transfer of risk.

Claims based on defects become statute-barred 12 months after delivery of the goods supplied by us to our orderer. For claims for damages caused intentionally or due to gross negligence and in the case of injury to life, limb or health based on intentional or negligent breach of duty on the part of the user, the statutory limitation period applies.

Insofar as the law pursuant to § 438 para. 1, no. 2 BGB (Buildings and articles for buildings), § 479 para. 1 BGB (Right of recourse) and § 634a para. 1 BGB (Construction defects) provides for mandatory longer periods, these periods apply.

If, despite all care exercised, the delivered goods should contain a defect that already existed at the time of the transfer of risk, we will, at our choice, rectify the defect or deliver a replacement, subject to timely notification of defects. We shall in any case be given the opportunity of remedy within a reasonable period. Rights of recourse are not affected by the above stipulation, without restrictions.

If the remedy fails, the orderer – notwithstanding any claims for damages – can cancel the contract or demand a reduction in price.

Claims based on defects do not exist in the case of slight deviation from the agreed quality, in the case of only slight impairment of usefulness, in the case of normal wear and tear and in the case of damages that occur after transfer of risk due to incorrect or negligent handling, excessive strain, unsuitable operating resources or due to special external influences that are not provided for by the contract. In the case of repairs or modifications that are carried out improperly by the orderer or third parties, claims based on defects likewise do not exist for these repairs or modification and the resulting consequences.

Claims on the part of the orderer for expenses required for the purpose of remedy, in particular transport, labour and material costs, are excluded insofar as the expenses increase because the goods delivered by us are subsequently moved to a location other than the orderer's place of business, unless the relocation of the goods is in accordance with their normal use. Return of the goods must be coordinated with us in advance.

Rights of recourse on the part of the orderer against us exist only insofar as the orderer has made no agreements with his customer beyond the mandatory statutory claims for damages. For the scope of the orderer's right of recourse against the supplier, the stipulation in accordance with the preceding paragraph applies accordingly, in addition.

### **§ 8 Claims for damages**

Our liability, regardless of the legal basis, is limited to damages that we or our vicarious agents have brought about intentionally, due to gross negligence or through breach of essential duties due to slight negligence.

In cases of slightly negligent breach of essential duties for fulfilment of the contract purpose, our liability is limited in amount to the typical damages in the case of comparable transactions of this type that were foreseeable at the time of conclusion of the contract or upon committing the breach of duty, at the latest.

Liability for damages beyond that defined above is – to the extent permitted by law – excluded.

Claims for damages based on product liability law, due to lack of a guarantee of quality and due to injury to life, limb or health or due to other mandatory statutory provisions remain unaffected by this clause.

The above stipulation is not related to a change in the burden of proof to our disadvantage.

### **§ 9 Technical Application Advice, Right to Amend**

Application, use and processing of the goods obtained are the exclusive responsibility of the purchaser. Both written and verbal technical application advice on our part only serve as non-binding information, also concerning third-party intellectual property rights. The purchaser shall not be released from inspecting the goods supplied with respect to their applicability for intended procedures and purposes. If a question of liability on our part arises, then the liability amount, insofar as permitted by law, is limited to the value of the goods delivered by us. We reserve the right to modify designs.

### **§ 10 Reservation of Title**

Ownership is transferred to the purchaser only after all debts pertaining to the existing business relationship have been settled. Checks and bills of exchange will only be accepted on account of payment. Therefore, ownership of each item is only transferred to the purchaser with the final satisfaction of the debt. Payment by cheque with simultaneous justification of a debt-equity ratio using bills of exchange does not count as final satisfaction of the debt. Retention of ownership is maintained even if the received goods or associated parts are installed in another object. In point and fact, it is regarded as agreed that a state of value-ratio co-ownership exists. The customer has the right, in the normal course of business, to continue to use or to sell the goods to which title is retained. However, the customer may not pledge or use the goods as collateral. In the event that the item is re-sold or processed, the original purchaser immediately cedes all claims up to the amount of the

outstanding invoice to us. This includes ancillary rights against third-party debtors and allows us to collect the proportion of the debt owed from the invoice.

In the event that the original purchaser collects the ceded claim themselves, then it is done for us in trust. The proceeds collected for us are to be given to us immediately. At our request, the original purchaser is obligated to inform the second purchaser of the assignment of claims and to provide us with the necessary information required to assert our claim against the second purchaser. The original purchaser must immediately inform us about garnishment or any other impairment of our rights by third parties. If the second purchaser does not immediately pay in cash, then the original purchaser must ensure that our reserved title status is transferred and continues to remain in effect.

### **§ 11 Payment**

Payment must be made strictly net, with no transfer fees, to our payment office within 30 days after the invoice issue date. However, payment in full is immediately due if the purchaser is in arrears with other open bills, or if we are unsure of the purchaser's financial status due to knowledge of bankruptcy filing, out-of-court settlement, protested bills, enforcement by writ, loss of financial sponsorship or other events listed in §321 BGB (German Civil Code). In such cases, we retain the right to perform outstanding deliveries only against prepayment or to withdraw from the contract. A discount of 2% is applied to payments made within 8 days after the invoice date. Such a discount is only applied if open bills connected to this and any other previous orders have been satisfied. In cases where multiple bills are outstanding, incoming payments will always be applied to the oldest open bill, regardless of instructions from the purchaser. A separate agreement must be made regarding the acceptance of bills of exchange. Bills of exchange or cheques are accepted under reservation and are not considered as cash payment before complete encashment. Discount charges must be paid for in cash. If the 30-day target is exceeded, default occurs without prior issue of a reminder. Default interest equivalent to the current bank rate for overdrafts must be paid. The purchaser is not entitled to withhold or offset payments as a result of any counter claims.

### **§ 12 Drawings**

Drawings, documents and drafts may not be disclosed to third parties by the recipient. Contraventions entitle Bürkert to full compensation. Drawings or documents provided together with offers must be returned by the receiver when no order is placed.

### **§ 13 Software Usage**

If software is contained in the scope of supply, the orderer shall be granted a non-exclusive right to use the supplied software, including its documentation. It is provided for use together with the delivered item. Use of the software on more than one system is not permitted.

The orderer may only copy, revise, translate or convert the software from object code to source code to the extent permitted by law (§§ 69 a ff. UrhG (German Copyright Act)). The orderer agrees not to remove the manufacturer's data, in particular the copyright notice, nor to change any of this data without our express consent.

Any other rights associated with the software and documentation including copies thereof remain vested with us or the software manufacturer. Granting sublicenses is prohibited.

## **§ 14 E-commerce**

If the orderer purchases products or services from us through a website or other e-commerce process, the following stipulation applies additionally:

The orderer is responsible for the protection of his password and acknowledges that purchases carried out using his password are binding for him.

An order can be placed after completion of the registration process. By entering your log-in data and clicking the "Order" button in the final step of the order process you then place a binding order for the products in the shopping cart.

You will receive a confirmation of receipt immediately after sending your order. The sales contract is not valid until you receive our order confirmation. The order confirmation is sent in electronic form. The decision to declare an order confirmation is within our discretion.

We have made all reasonable efforts to ensure that all websites and access points are secure; however, we refuse to accept any liability in the event of misuse of the information that was transmitted to or from these websites and / or access points, namely by outside parties who are not our employees.

The orderer agrees to our use of cookies through the website of the orderer or other e-commerce processes.

## **§15 Applicable Law, Place of Jurisdiction, Partial Nullity**

These Standard Terms and Conditions and all legal relationships between seller and purchaser are governed by the laws of the Federal Republic of Germany, excluding UN Purchase Law. As far as legally permitted, Künzelsau, Germany is the exclusive court of jurisdiction for all direct or indirect disputes arising from the contractual relationship. Place of delivery for supply and payment is Ingelfingen, Germany. Should a provision of these terms and conditions or a condition in the context of other agreements be or become invalid, this shall not impair the validity of all the remaining provisions or agreements.

Updated: May 2017