

## **General Terms and Conditions (GTC) of Brückner-Werke KG for Sales**

### **§ 1**

#### **Validity of the Terms and Conditions**

Deliveries, services and offers from Brückner-Werke KG (hereinafter referred to as the Seller) shall be made exclusively on the basis of these GTC. Customers in the sense of these business conditions are exclusively business customers. In accordance with § 14 German Civil Code (BGB), business customers are natural or legal persons, or partnerships with a legal capacity, acting in the execution of their commercial or independent professional activity when concluding a legal transaction. These GTC apply to all future business relationships, even if these will not be expressly agreed upon once again. These conditions are regarded as accepted at the latest with the acceptance of the goods. Counter confirmations from the Seller and the reference to his business and purchasing conditions are herewith contradicted.

### **§ 2**

#### **Offer and Conclusion of Contract**

The Seller's offers are subject to change and non-binding. Unless otherwise indicated, they expire 14 days after the offer is made. The Seller shall confirm declarations of acceptance and orders immediately after receipt by email or fax. A contract shall only be deemed concluded when the Seller confirms the order or contract in writing. The languages of the contract are German and English.

Side agreements and changes and supplements to the contract are valid only when confirmed in writing by the Seller.

### **§ 3**

#### **Prices**

Unless expressly stated otherwise in the offer, prices are ex works, including standard packaging and excluding statutory value added tax. Additional services will be invoiced separately.

The Seller is entitled to pass on any further costs arising after conclusion of the contract to the customer for price increases with regard to customs duties, fees, taxes, and similar.

## § 4

### **Quantity and Quality**

Excess or short delivery is permitted to the extent of up to 5% of the quantity agreed upon, provided that the origin of the difference was not known when the contract was concluded (e.g. short delivery from the preliminary supplier, shrinkage through production, changed container sizes, etc.).

For natural products, natural or production-related slight variations, e.g. in colour, form, size, odour, taste, as well as the active ingredients, do not constitute a defect. Likewise, deviations in microbiological or chemical/physical parameters to the extent of 20% do not constitute a defect, if no legal provisions have been breached by them.

If sold by sample, the sample is considered as a reference only to display the general product characteristics. The characteristics listed in the specification are solely an integral part of the contract.

For commodities to be delivered directly to the customer from the source, without further treatment or processing in one of the Seller's works, or which were delivered via one of the Seller's warehouses, rights of guarantee vis-à-vis, the Seller can be asserted only when deviations customary at source have been considerably exceeded with regard to foreign bodies, chemical-physical parameters, microbiology, etc.

## § 5

### **Period of Delivery and Performance**

Delivery dates or deadlines agreed upon must be made in writing. Delivery dates named by the customer in his order are only then binding for the Seller, when the Seller counter confirms them. This also applies when the customer specifies that the delivery date is deemed accepted, if no objection is made within a certain deadline.

The Seller is not responsible for delays in deliveries and services due to force majeure, due to another hindrance to service for which the Seller is not responsible and due to events which considerably hinder delivery on the part of the Seller for a longer time or make it impossible, including in particular strikes, lockouts, official decrees, export bans or limitations from the country of origin of the raw materials, etc., even if they occur at the Sellers' suppliers and/or their sub-suppliers and if deadlines and dates were agreed as binding. They entitle the Seller to postpone delivery or service by the duration of the hindrance plus a reasonable response time or to withdraw from the contract in whole or in part because of the part which is not fulfilled.

If the Seller has made special provisions for goods for a customer in the initial contract (e.g. special cut, packaging, etc.) and the Seller is not supplied by his supplier or not supplied in accordance with the contract, the Seller has the right to withdraw from the contract, without the buyer being able to assert claims for damages.

In the event that the hindrance remains longer than three months, the customer has the right to withdraw from the contract, due to non-fulfilment of that part of it, after having given a reasonable extension period. If the delivery period is extended or if the Seller is released from his obligations, the customer cannot derive any claims for damages from such an extension or release. The Seller shall only be entitled to appeal to the above circumstances, if he notifies the customer without delay.

The Seller is entitled to provide partial deliveries and partial services at any time, unless the partial delivery or partial service be unacceptable to the customer.

Compliance with delivery and service obligations on the part of the Seller is conditional upon the customer fulfilling his obligations in a timely and proper manner.

In the event that the customer is in default of acceptance, the Seller is entitled to demand compensation for the damages incurred; upon commencement of default of acceptance, the risk of accidental deterioration or accidental loss shall pass to the customer.

For deliveries and services to customers abroad, it is expressly agreed that all legal expenses, in court or out of court, arising to the Seller in case of default in payment, shall be borne by the customer.

## **§ 6**

### **Passing of Risk**

The risk shall be passed to the customer as soon as the shipment has been handed over to the person performing transport or when it has left the Seller's warehouse for despatch. If despatch is delayed at the customer's request, the risk shall pass to him when notification is made of readiness for despatch.

## **§ 7**

### **Acceptance**

If the customer does not collect the goods upon delivery within the deadline agreed upon, or if no deadline is agreed upon within 3 months after the conclusion of the contract, the Seller can set the customer a reasonable new deadline for collection and withdraw from the contract, if the goods are not collected within this period. Additionally, the Seller has the right to realise the goods by way of a sale for self-redress or to deposit them.  
The Seller has the right to claim damages for non-fulfilment.

## § 8

### **Guarantee**

The deadline for the assertion of claims for defects is 1 year after delivery of the products.

The customer must indicate obvious defects on the freight papers upon receipt of the goods and inform the Seller of the damages immediately in writing. Concealed defects are to be notified to the Seller in writing immediately after their detection.

Should the customer fail to make notification in time or if the customer processes or sells the goods, this shall be deemed to be unconditional approval of the goods.

Any claims against the Seller for defects can only be made by the immediate customer and are not assignable.

## § 9

### **Retention of Title**

Until all payment claims have been met to which the Seller is entitled from the customer for any legal reason now or in the future (including all current account balance amounts), the Seller shall be granted the following security, which the Seller shall release at his own discretion on demand, as soon as the value of the security is permanently more than 20% above the value of the amounts payable.

The goods remain the property of the Seller. If the Seller's ownership lapses because of a binding obligation, it is hereby agreed that the customer's ownership of the subject matter of the contract passes to the Seller proportionally (invoice value). The customer shall store the Seller's property free of charge. Goods to which the Seller has the right of ownership will be referred to as retained goods.

The customer is entitled to process and sell the retained goods in the proper course of business as long as he is not in default of payment. Pledges or assignment as security are not permissible. Claims arising from resale of the retained goods or another legal reason (insurance, unlawful action) shall be hereby assigned by the customer to the Seller in their entirety as security. The Seller grants the revocable authorisation to the customer to collect the claims assigned to the Seller on his own behalf for the Seller's account. This authorisation of collection may only be revoked if the customer fails to meet his payment obligations properly.

If the retained goods are seized by a third party, especially in the case of garnishments, the customer shall point out that the Seller is owner and inform him immediately, so that the Seller can enforce his property rights.

The customer is liable if the third party is not able to refund court costs or out of court costs arising to the Seller in this relation.

If the customer acts in violation of the contract, especially in the event of payment default, the Seller is entitled to withdraw from the contract or demand the return of the retained goods.

## **§ 10**

### **Payment**

Unless otherwise agreed, the Seller's invoices are payable 14 days after being issued, without any deductions, with no charges arising for the Seller.

The Seller shall be entitled, irrespective of any contrary terms and conditions of the customer, to offset any payments first of all against any older debts of the customer, and will inform the customer about the type of settlement made. If costs and interest have already accrued, the Seller is entitled to offset the payments first of all against the costs, then the interest, and finally against the primary obligations.

Payment is deemed as executed when the Seller can avail of the amount. When cheques are used, payment is deemed as executed when the cheque is cashed.

If the Seller becomes aware of circumstances which cast doubt on the customer's creditworthiness, in particular, when cheques are not cashed or his payments are stopped, the Seller is entitled to demand the remaining amount owed, even if he has accepted cheques. In this case, the Seller is also entitled to demand payments in advance or securities.

The customer is only entitled to offset, withhold or reduce payment, even if notices of defects or counterclaims have been asserted, when the counterclaims are legally binding or are undisputed. The customer is however entitled to withhold payment due to counterclaims from the same contractual relationship.

In the event that the customer defaults on a payment, he immediately enters into default with all other claims due against him without a special notice of default being required.

## **§ 11**

### **Liability**

Claims for damages are excluded, regardless of the type of breach of duty, including unlawful actions, unless intentional or grossly negligent acts have taken place.

An exception is permitted when major contractual obligations are violated; in this case the Seller is liable for any negligence, however, only up to the extent of the foreseeable damage. Claims for lost profit, expenses saved, arising from third party compensation claims and compensation for other indirect and consequent damage can only be asserted in cases of intentional breach of duties or demanded when a quality characteristic guaranteed by the Seller has the specific purpose of safeguarding the customer against such damage.

To the extent that the Seller's liability is excluded or limited, this also applies to employees, representatives and other vicarious agents of the Seller.

## **§12**

### **Authorisation of Assignment**

The seller is entitled to assign his claims from deliveries and services for financing purposes.

## **§ 13**

### **Final Provisions**

German law applies for all terms and conditions between the Seller and the customer. The provisions of the UN Sales Convention are not applicable.

If the customer is a businessman, a legal person under public law or a special fund under public law, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the Seller's place of business.

The Seller is not subject to any particular code of conduct.

Should a provision of these terms of business or a provision of other agreements be or become invalid, this does not affect the validity of any other provisions or agreements. The contracting parties agree to replace the invalid provisions with valid ones most closely approximating to the intended purposes of the provisions.

Status as of 25/11/2013