

Terms of Sale and Delivery of GOTTLIEB BINDER GmbH & Co. KG, 71088 Holzgerlingen

1.0 Scope of applicability

- 1.1** Our Terms of Sale and Delivery are part of all offers and sales contracts relating to our goods; our Terms of Sale and Delivery shall apply exclusively. Terms and conditions of the Customer which contradict or deviate from our Terms of Sale and Delivery shall not apply, unless we expressly approve such terms in writing. Our Terms of Sale and Delivery apply even in the event that we render performance unconditionally despite being aware of terms of the Customer which contradict or deviate from our Terms of Sale and Delivery.
- 1.2** These Terms of Sale and Delivery shall also apply for future transactions with the Customer to the extent that such transactions are similar in nature.
- 1.3** We shall process any personal information obtained either from the Customer or from third parties in the context of the business relationship in accordance with the provisions of the Federal Data Protection Act (Bundesdatenschutzgesetz) and the Basic Data Protection Ordinance (Datenschutz-Grundverordnung).

2.0 Order of priority

The following order of priority shall apply when determining type and scope of the performance of the two parties:

- the stipulations of our order confirmation, or, in the absence of an order confirmation, the stipulations of our offer;
- the further contractual provisions as well as special and general technical terms set out in our order confirmation, or, in the absence of an order confirmation, in our offer;
- these Terms of Sale and Delivery;
- the provisions of general law.

3.0 Offers, offer documents, conclusion of the contract

- 3.1** All our offers are non-binding until final confirmation of the order.
- 3.2** We reserve ownership and copyright in all drawings and other offer documents; these shall not be made available to third parties except with our express permission. References to technical standards and other information contained in these and other documents shall only serve as specifications and do not constitute guarantees, in particular not with respect to grade, quality or durability.

Any recommendations made by us for the use of our goods are made to the best of our knowledge. Due to the multiplicity of potential uses, differing requirements and individual conditions of use, we accept no liability for the goods being fit for any particular use, unless we have expressly warranted such fitness in writing. The Customer shall, in any event, be obligated to verify the fitness of the goods for his intended use.

- 3.3** All orders placed with us by the Customer shall be deemed binding offers. We shall be entitled to accept such an offer within 2 weeks by sending an order confirmation. The timely dispatch of the order confirmation shall be sufficient to meet the deadline. To be valid, the acceptance of such offer must be declared by a person with authority to represent. We will provide the Customer with a list of authorised persons upon request.

4.0 Prices

- 4.1** The applicable prices are as indicated in the order confirmation; in the absence of an order confirmation, the applicable prices shall be taken from our offer. Prices are ex-works and exclude packaging, freight, transfer and customs costs. In addition, all prices are exclusive of the applicable statutory VAT. For deliveries within the EU, the Customer must provide his VAT ID number. The Customer must provide timely notification if a delivery is not subject to VAT, and furnish the required proof.
- 4.2** In the event that there are increases in costs after the conclusion of the contract (e.g. due to higher wages, material costs, tax increases or higher purchase costs), we reserve the right to increase our prices appropriately in accordance with the cost increase, beginning four months after the conclusion of the contract. We are obligated to act accordingly in the event of lower costs.

5.0 Terms of payment, set-off/right of retention, withdrawal

- 5.1** Unless indicated otherwise in the order confirmation, the purchase price is due immediately, without any deductions; this also applies to partial deliveries. If payment is not made within 20 days after the invoice date, the Customer shall be in default of payment. We will apply the statutory default interest. The right to claim additional damages is reserved. If we subsequently extend the terms of payment, the obligation with respect to interest will be unaffected, unless otherwise agreed.
- 5.2** Payment by cheque or bill of exchange shall require a special prior agreement. Bills of exchange and cheques are accepted only as a form of payment and subject to their eligibility for discounting by our bank; the cost of discounting and collection shall be borne by the Customer. Payment is only deemed made on the day on which we may dispose over the funds.
- 5.3** If we become aware of circumstances which put the creditworthiness of the Customer into question, or if the Customer is

in arrears with payment of the price, we shall be entitled to request that full payment be made in advance, or that security be provided; should such payment or security not be provided within the set time limit, we shall be entitled to withdraw from the contract.

- 5.4** The Customer shall only be entitled to exercise a right of set-off if his counter claims are uncontested, ready for decision, legally enforceable or recognized by us in writing. The Customer shall only be entitled to exercise a right of retention to the extent that his counterclaim arises from the same contractual relationship. Should the delivered goods be defective, the Customer shall only be entitled to exercise a right of retention if such defects are obvious, subject to the withheld amount being proportionate to the defects and the expected costs of the cure.
- 5.5** Should the Customer cancel a placed order without being entitled to do so, we may (without prejudice to the right of asserting higher actual damages) demand an amount equal to 10% of the price agreed in accordance with clause 4.1 for the costs incurred in connection with the processing of the order and for the lost profits. Where the goods or parts thereof have already been produced or customized, our damage shall be equal to the purchase price. In both cases, the Customer shall be entitled to prove that the actual damage was lower.
- 5.6** Until all due claims arising from the entirety of our business relationship have been paid, including any default costs, we shall have a right of retention. We shall not be obligated to render any deliveries until all due claims have been settled, including any default costs.

6.0 Delivery, parcel delivery, transfer of risk

- 6.1** Deliveries are "ex works" pursuant to Incoterms 2010, with the goods being provided at the relevant production facility. The Customer shall be obligated to accept (and inspect without undue delay) the goods at the place where they are provided within 14 days after the notification of such provision is sent; this shall not apply if the Customer is temporarily incapable of accepting the goods and is also able to prove that he is not culpable for this inability.
- 6.2** If the Customer culpably fails to accept the goods within the period set out in clause 6.1, the Customer shall be deemed in default of acceptance. If the Customer is in default of acceptance, and fails to carry out such acceptance after we grant him an additional grace period of 14 days, we shall be entitled to withdraw from the contract. A grace period can be dispensed with if the Customer refuses to accept the goods determinedly or with final effect, or if the Customer is clearly unable to pay the price.
- 6.3** At the request of the Customer, we will send the goods to a destination indicated by the Customer. The Customer shall bear the shipping costs as well as the risk of accidental loss, destruction or deterioration of the goods, even if we carry out the transport. Where goods are shipped, our production facility shall nevertheless remain the place of performance for our delivery obligation.
- 6.4** The Customer shall bear the costs of packaging, if special packaging is agreed. If our agreement with the Customer stipulates the return or exchange of loading devices (pallets etc.) or means of conveyance, the Customer shall be obligated to return the loading devices or means of conveyance to us free of charge within a reasonable time period. If the loading devices or means of transport are not returned without undue delay after a one-time request is made, we shall be entitled to bill the Customer for their value. If rental containers are used, the Customer shall bear the cost of the rent.
- 6.5** Unless agreed otherwise, the goods shipment will not be insured. Where insured shipment is stipulated, the Customer shall cover the cost.
- 6.6** The risk of accidental loss, destruction or deterioration of the goods shall pass to the Customer when the goods are handed over to the Customer, the forwarder or carrier. If the acceptance or dispatch is delayed due to reasons for which the Customer is answerable, the risk is transferred to the Customer as of the time at which the Customer falls into default of acceptance or on the day the goods are ready for dispatch.
- 6.7** Partial deliveries shall be permitted, if
- the Customer is able to make use of the partial delivery in accordance with the contractually agreed purpose,
 - the delivery of the remaining goods is assured, and
 - the Customer does not incur significant additional expenditure or costs, unless we agree to bear such cost.

7.0 Performance period, incoming supplies, force majeure, default in delivery, withdrawal

- 7.1** Where we indicate time periods and dates of performance, such time periods and dates are deemed agreed upon on an approximate basis only and such indication does not give rise to a duty to render performance by a fixed date (Fixgeschäft).

The period for performance commences with the dispatch of the order confirmation, but not before the timely and proper discharge of the obligations of the Customer prior to performance; this applies, in particular, to any documents, approvals and releases to be furnished by the Customer as well as to any advance payments which have been agreed. The period and dates of performance are met if the purchased goods are handed to the carrier or if notification of the placement of the goods at the disposal of the Customer before the performance period ends.

- 7.2** In the event of changes to the contract which could influence the performance period, the performance period shall be extended accordingly, unless separate agreements have been made in this regard.
- 7.3** Should we, despite proper and compliant provision (i.e. matching the delivery agreed with the Customer in terms of quantity and quality), fail to receive deliveries from our sub-contractors or sub-suppliers correctly and on time, for reasons for which we are not answerable, or should events of force majeure occur (i.e. not culpable obstacles to delivery and

performance lasting for more than 14 calendar days), we shall inform the Customer thereof without undue delay. In such an event, to the extent that we have complied with our abovementioned duty to inform and insofar as we have not assumed the production risk and the obstacle to performance is not temporary in nature, we shall be entitled to postpone performance for the period for which such impediment continues, plus some reasonable recovery time thereafter, or to withdraw from the as-yet unfulfilled part of the contract in whole or in part. Strikes, lock-outs, shortages of raw materials and energy, actions of public authorities, transport difficulties and impediments of operations (e.g. due to fire, water and equipment damage) for which we are objectively not culpable, as well as all other impediments for which we are objectively not culpable, shall be considered as equivalent to force majeure.

Should an agreed period or date for performance be exceeded by more than four weeks due to the aforementioned circumstances, or should, in instances of non-binding dates for performance, upholding the contract objectively be unacceptable for the Customer, the Customer shall be entitled to withdraw from the unfulfilled part of the contract. In such a case, the Customer shall have no further rights, in particular not to damages.

7.4 In the event that performance periods or dates are exceeded, we shall only be considered to be in default of delivery after the fruitless expiration of a period of grace set by the Customer in writing (e.g. by letter, email, fax), such grace period to last for no less than 8 working days.

7.5 The Customer shall be entitled to damages due to delay in performance and damages or reimbursement of expenses in lieu of performance only in accordance with clause 10 below; this applies even should we be answerable for being in default of delivery.

8.0 Default of acceptance

If the Customer fails to accept performance or breaches any other contractual duties of cooperation such as inspection, specification, request for delivery, acceptance or shipping instruction, we shall be entitled to claim compensation for any resulting damage or loss, including any additional expenditure. We reserve the right to assert additional claims and to exercise other rights.

9.0 Defects in title and material defects

We draw attention to the fact that due to its composition, the adhesive applied to the goods remains workable for a period of 6 months after the date of manufacture; this assumes proper storage conditions. This time limitation on the workability constitutes a technical property of the goods and does not constitute a defect.

9.1 With regard to agreements about the grade and quality of our performance, unless the order confirmation stipulates otherwise, only our product description shall be deemed agreed. Public statements, praise or advertising on our part however do not represent a contractual description of grade and quality of the goods. Deviations in quality, colour, width, weight or design shall also not be considered a defect, to the extent that they are customary or minor deviations which cannot be avoided for technical reasons.

9.2 Claims by the Customer with respect to defects are dependent upon his examining the goods for defects immediately upon receipt (and prior to any incorporation), and notifying us in writing (e.g. by letter, email, fax) of any defects within 14 calendar days of pick-up or delivery. In the case of hidden defects, the applicable time period shall be two weeks from discovery. This shall not affect the statutory duty of inspection and notification of defects applying to businessmen under § 377 German Commercial Code (HGB).

9.3 To the extent that the defect in the performance is due to a cause already existing at the time of the transfer of risk, the Customer shall be entitled, at our option, to demand cure by repair of the defect or delivery of a new defect-free item.

Should items other than the defective goods be damaged as a result of the cure, the Customer may only demand compensation for such damage in accordance with clause 10 below.

9.4 In the event that we refuse to cure, or if two cure attempts fail, or if the cure is not reasonably acceptable to the Customer, or if the specification of a grace period can be dispensed with pursuant to §§ 281 para. 2 German Civil Code (BGB) or 323 para. 2 BGB, the Customer shall be entitled, at his option, to withdraw from the contract or demand an appropriate reduction of the purchase price (Minderung). The Customer shall in all cases be entitled to damages or reimbursement of expenses only in accordance with the following clause 10. The Customer shall be entitled to recourse against us only to the extent that the Customer has not made any agreements with its own customers which exceed the statutory claims for defects. In other regards, the statutory provisions relating to supplier recourse shall remain unaffected (§ 445 a para.1, 3 BGB)

10.0 Damages and claims for reimbursement of expense

10.1 Unless the preceding provisions stipulate otherwise, and subject to clause 10.2 below, the Customer shall have no claim whatever to damages or expenses, regardless of the legal basis of such claims; this shall apply, in particular, to claims for damages due to breach of obligations arising from contract negotiations, initiation of a contract and similar business contacts, other breaches of duties and tortious claims due to property damage pursuant to § 823 BGB and claims of the Customer for reimbursement of expenses in lieu of performance.

10.2 The liability restriction pursuant to clause 10.1 above shall not apply

a) to the extent that damage or loss is caused by gross negligence or intent on our part or on the part of our representatives or agents employed by us in the performance of our obligations, subject to the proviso that in the event of gross negligence, damages shall be limited to the foreseeable damage typical for such contracts.

b) in the event of culpable breaches of cardinal contractual duties, with the proviso that in such cases damages shall be limited to the damage typical for such contracts and foreseeable at the time of the conclusion of the contract. Cardinal

contractual duties are obligations protecting legal positions of the Customer which are essential to the contract and of which it was the specific purpose of the contract to provide to the Customer. Cardinal obligations also include obligations the fulfilment of which enables proper implementation of the contract in the first place and the observance of which the Customer may rely on.

- c) in cases of statutory liability under the German Product Liability Act (Produkthaftungsgesetz);
- d) in cases of damage or loss resulting from injury to life, limb or health, or
- e) in cases of delays, if a fixed time was specified for delivery or performance;
- f) if a defect is fraudulently omitted, by assumption of a production risk within the meaning of § 276 BGB or if (by way of exception) we give a written guarantee with respect to characteristics or durability within the meaning of § 443 BGB.
- g) in other instances where mandatory statutory liability applies.

The above provisions shall not be construed to contain a reversal of the burden of proof.

10.3 Claims for reimbursement of the Customer's expenses are limited to the value of the interest the Customer has in the fulfilment of the contract.

10.4 To the extent that our liability is excluded or limited, the same shall apply to the individual personal liability of our employees, representatives and agents employed in the performance of our obligations under the contract.

11.0 Limitation by lapse of time

11.1 Claims for defects lapse 12 months after the transfer of risk. The statutory period of limitation for claims relating to supplier recourse pursuant to § 445 a para. 1, 3 BGB shall remain unaffected.

Should we attempt a cure as a gesture of good will, the limitation period shall not recommence. Where the Customer has a right to demand cure, our implementation of such cure through subsequent improvement or replacement shall constitute acknowledgement of such claim pursuant to § 212 para. 1 no. 1 BGB only with regard to such defects as were the subject of the Customer's request for cure, or caused by a deficient attempt at cure; otherwise, the limitation period with respect to the original performance shall continue without interruption.

11.2 Other claims for damages of the Customer arising from or in connection with our performance lapse 12 months after the Customer learns of the damage or loss and the identity of the damaging party, or fails to do so as a result of gross negligence; in any event, such claims lapse 5 years after they arise, regardless of knowledge thereof or due to gross negligence.

11.3 In cases covered by clause 10.2, the statutory periods of limitation shall apply to any claims for damages or reimbursement of expenses.

12.0 Retention of title

12.1 The goods shall remain our property until all claims arising from our business relationship with the Customer are paid (reserved goods), even if payments are made with regard to specific claims. Where individual claims are added to a current account or netted or accepted, this shall not affect the retention of title. Payment shall be effected only when we receive such amount or such amount is credited.

If we establish a liability under a bill of exchange in relation to the payment by the Customer, the retention of title shall not end before the Customer as the drawee pays the bill.

12.2 If the reserved goods are processed by the Customer into a new movable thing, such processing shall always be carried out for our benefit, without giving rise to any obligations on our part; the new thing shall become our property. If the reserved goods are processed with other goods which do not belong to us, we shall acquire co-ownership in the new thing, the size of our share being determined by the ratio of the value of the reserved goods (invoice total including VAT) to the other processed goods at the time of the processing. If reserved goods are combined, intermixed or mingled pursuant to §§ 947, 948 BGB with goods not owned by us, we shall acquire co-ownership in accordance with the law. Should the Customer acquire sole ownership due to combination, intermixture or mingling, he hereby already grants us co-ownership in accordance with the relationship of reserved goods (invoice total incl. VAT) to the other goods at the time of the combination, intermixture or mingling. The Customer shall in these cases store, free of charge, such things which are our property or co-owned by us and which are deemed reserved goods within the meaning of the above provisions.

12.3 If the Customer sells the reserved goods alone or together with other goods not owned by us, the Customer hereby already assigns to us all claims (including all ancillary rights) arising from the reselling, in the amount of the value of the reserved goods; our rights shall have priority to the rights of others; we hereby accept such assignment. The value of the reserved goods is the invoice total of our claim (including VAT) plus a safety margin of 10 per cent, which however shall only apply to the extent that it does not collide with the rights of third parties. If we are co-owners of the resold reserved goods, the assignment of the claims shall also cover the amount corresponding to the value of our co-owner interest.

12.4 The Customer is entitled to sell or process the reserved goods only in the ordinary course of business and only subject to the proviso, that the claims within the meaning of clause 12.3 are, in fact, transferred to us. The Customer shall not be entitled to any other dispositions with regard to the reserved goods and he shall in particular not pledge or assign the reserved goods as security.

12.5 The Customer shall remain authorised to collect the claims assigned in accordance with the preceding clause 12.3 until we withdraw such authorisation; this shall not affect our right to collect such assigned claims ourselves. We shall not make use of our right to collect such debts or to withdraw such authorisation as long as the Customer renders the payments

due from the obtained proceeds and is not in arrears with its payment obligations. At our request, the Customer shall inform us of the debtors owing the assigned claims and shall provide us with all information necessary for their enforcement and release to us all related documents and notify the debtors of the assignment; we shall be authorised to notify the debtors of the assignment.

- 12.6 The Customer shall be obligated to inform us without undue delay of the attachment or seizure of the reserved goods or claims, which have been assigned in advance or of any other infringement upon such goods or claims by third parties; the Customer shall also provide us with the documents necessary for an intervention. The Customer shall bear all costs of our intervention unless such costs are otherwise covered.
- 12.7 The right to sell, use or integrate the reserved goods and the authorisation to collect the assigned claims shall be cancelled if the Customer suspends payments of its debts or an application for insolvency proceedings is filed against the assets of the Customer; any protests of cheques or bills of exchange shall also cancel the authorisation to collect the claims.
- 12.8 In the event of contractual breaches by the Customer, in particular in cases of payment defaults, we shall be entitled, if the further conditions of § 323 BGB are met, to repossess the reserved goods if we withdraw from the contract. We shall be entitled to realise the reserved goods after their repossession; the proceeds (less reasonable selling expenses) shall be deducted from the Customer's debt.
- 12.9 We hereby undertake to release our security interest at the request of the Customer to the extent that the realisable value of our security interests exceeds the secured debts by more than 10 per cent; we shall be free to select the security interests to be released.
- 12.10 The Customer shall be obligated to treat the reserved goods with care, and to insure them sufficiently at replacement value against fire, water and theft, at his own cost; the Customer hereby already assigns to us any claims (in the amount of the value of the reserved goods) against the insurer which arise due to any insured events relating to the reserved goods; we hereby accept the assignment.

13.0 Confidentiality, proprietary rights

- 13.1 The Customer shall keep confidential (as trade secrets) vis-à-vis any third parties all commercial and technical information which is not common knowledge and of which he becomes aware in connection with the delivery; this confidentiality obligation shall apply both for the duration of the business relationship as well as after the relevant deliveries have been carried out. The Customer shall also refrain from passing on any data he receives from his business relationship with us.
- 13.2 Should we (on occasion of a Customer's order) develop a product capable of being protected, we shall be entitled to the industrial property rights without any restrictions. This shall also apply if the development is carried out based on information provided by the Customer.

14.0 Place of jurisdiction, applicable law, confidentiality, partial invalidity

- 14.1 Our respective production facility pursuant to clause 6.1 shall be the place of our performance and the place of cure. Our principal place of business (Holzgerlingen) shall be the place of performance for payment of the purchase price and any other performance by the Customer.
- 14.2 If the Customer is a merchant (Kaufmann), a legal person under public law or a special entity under public law, the place of jurisdiction shall be determined by our principal place of business; however, we shall be entitled to bring a claim against the Customer in any other lawful venue.
- 14.3 The law of the Federal Republic of Germany applies, the UN Convention on Contracts for the International Sale of Goods is excluded.
- 14.4 Should one of the above provisions or any other agreement struck in the context of the business relationship be or become invalid, this shall not affect the validity of the rest of the remaining provisions. The invalid provision shall be replaced by a provision coming as close as possible to the commercial result intended with the invalid provision.
- 14.5 These Terms of Sale and Delivery have been prepared in the German and English language. Where the German and English version diverge, the German version shall have precedence.