

**General Terms and Conditions of Delivery and Payment
of Bergmann & Hillebrand GmbH & Co. KG
for industrial business in Germany (hereinafter “Terms of Sale”)(Last updated: 2020)**

Area of application

1. These Terms of Sale apply to every (supply) framework agreement (hereinafter “agreement”) and all individual agreements and/or orders in line with an agreement (hereinafter “individual agreement”) with business operators, corporate bodies under corporate law or special funds under public law (hereinafter “Partner”).

Our deliveries and services are solely based on these Terms of Sale. They also apply to all future orders and contractual relationships between us and the Partner.

The Partner’s terms of business, which we do not explicitly acknowledge, do not have any validity.

General provisions

2. The contracting parties must immediately confirm verbal agreements in detail and in writing.

Insofar as written form is intended or required in these Terms of Sale, text form (§ 126 b of the German Civil Code - BGB) suffices in safeguarding the written form requirement.
3. Orders are not binding until we confirm them with our order confirmation.
4. The information and illustrations shown in the brochures and catalogues are approximate values customary in trade, unless we expressly designated them binding.
5. We are also entitled to refuse the Partner’s delivery schedules and orders given based on the agreements as well as the fulfilment of existing agreements and individual agreements and the extension thereof if it becomes evident that our payment claim would be at risk due to the lack of the Partner’s performance.

This shall be the case in particular if the creditworthiness of the partner would exceed the sum insured provided to us by our trade credit insurer to secure our claims against the partner upon acceptance of the delivery call-off or the order or if our deductible for any bad debt loss of the partner is increased by our trade credit insurer after conclusion of the contract or individual contract by more than 10 percentage points compared to the deductible at the time of conclusion. The provisions in sections 6, 25 and 39 as well as § 321 of the German Civil Code (BGB) and other statutory rights to refuse performance and rights of retention remain unaffected.

6. We are entitled to terminate agreements and individual agreements without notice for good cause.

In particular, good cause is indicated if, after the agreement has been made, it is determined that our claims for payment defined in the agreement are at risk due to the lack of the Partner’s performance – sec. 5 paragraph 2 applies accordingly -and the Partner does not credibly assure its performance within a reasonable period of time despite being requested to do so.

The provisions in sections 25, 25 and 39 as well as other statutory cancellation rights and rights of withdrawal remain unaffected.

7. If individual parts of these Terms of Sale are or become invalid, the validity of the remaining provisions is not affected thereby.

Long-term agreements and call-off purchase orders, price adjustments

8. Agreements and individual agreements that are indefinite or have a term longer than 2 years ("long-term agreements"), can be terminated giving 3 months' notice to the end of the month.
9. If there is a significant change in labour, material or energy costs in connection with long-term agreements, each contracting party is entitled to request negotiations regarding an appropriated adjustment of the price taking these factors into consideration.
10. If a binding order quantity is not stipulated, then we base our calculation on the non-binding order quantity (target quantity) expected by the Partner for a specific period of time.

If the Partner accepts less than the target quantity, we are entitled to increase the unit price appropriately.

11. Unless otherwise stipulated, binding quantities for supply agreements on call order must be conveyed at least 3 months prior to the delivery date by issuing the release order.

Additional costs caused by our Partner by a late release order or subsequent changes to the release order regarding time or quantity, must be borne by the Partner, unless the Partner is not responsible for the delay or the subsequent change; at the same time, our calculation is decisive.

Confidentiality

12. The Partner will only use any documents (including samples, models and data) and knowledge obtained in connection with this business relationship for the mutually pursued purposes. If we have marked these confidential or have an obvious interest in keeping them confidential, the Partner must not disclose them to third parties and must treat them with the same diligence as it would its own documents and knowledge.

This obligation applies from the time the documents or knowledge were/was first obtained and ends 36 months after the end of the business relationship.

13. This obligation does not apply to documents and knowledge that are public or the Partner was already aware of at the time they were obtained without being obligated to maintain confidentiality, which were later transmitted by a third party authorised to disclose them, or were developed by the Partner without using confidential documents or knowledge of our company.

The provisions of the law under the German Trade Secrets Act (GeschGehG) remain unaffected.

Drawings and descriptions

14. If we make drawings or technical documents pertaining to the goods to be delivered or the manufacturing thereof available to the Partner, these remain our property.

Samples and manufacturing equipment

15. Unless otherwise stipulated, the manufacturing costs for samples and manufacturing equipment (tools, moulds, templates, etc.) will be invoiced separately from the goods to be delivered. This also applies to manufacturing equipment that needs to be replaced as a result of wear.
16. We bear the costs for the servicing and proper storage as well as the risk of damage to or destruction of the manufacturing equipment.
17. If the Partner suspends or terminates the collaboration during the time of manufacturing samples or manufacturing equipment, all manufacturing costs that resulted up to that point in time must be borne by the Partner.
18. The ownership of manufacturing equipment that we manufacture or procure ourselves is not transferred to the Partner until full payment has been made.

We keep manufacturing equipment, even if the Partner has paid for it, at least until the supply agreement has been executed. After that, the Partner has the right to request the surrender of the manufacturing equipment if an amicable agreement has been reached on the time of surrender, possible manufacturing costs that must be reimbursed have been paid in full and the Partner has fully fulfilled its contractual obligations.

19. We will store the manufacturing equipment free of charge for the duration of three years after the last delivery to our Partner. We will then send a written request to our Partner, to provide us with information within 6 weeks regarding the further use. Our obligation to store said equipment ends if neither information is provided or a new order is placed within this period of 6 weeks.
20. We will only use customer-specific manufacturing equipment that belongs to the Partner for the supply of third parties with the prior written approval of our Partner.

Pricing

21. All prices are in Euro excluding value-added tax, packaging, freight, postage and insurance.

Payment terms

22. All invoices are payable within 30 days as of invoice date without discount.
23. If we undisputedly delivered partially defective goods, our Partner is still obligated to pay for the share free of defects, unless the partial delivery is not of interest to the Partner. Furthermore, the Partner can offset claims against compensation of costs for remedial action and completion; with other counterclaims only if they are established as final and absolute, ready for judgement or undisputed. Furthermore, the Partner's right of retention or right to refuse performance only exists within these limitations.
24. If the payment terms are not met, we are entitled to charge default interest amounting to the per cent charged to us by the bank for loans on overdraft however, at least the statutory default interest and the lump sum according to § 288 sec. 2, 5 of the German Civil Code (BGB).

25. In the event of default in payment, we can suspend the fulfilment of our obligations until receiving the payments after informing the Partner thereof in writing.
26. Bills of exchange and checks are only accepted after written agreement and only on account of performance and subject to their eligibility for discount. Discount charges are charged starting with the day of the due date of the invoiced amount. A guarantee for the punctual presentation of the bill of exchange and check or protesting a bill is excluded.

Delivery

27. Unless otherwise stipulated, we deliver “ex works”. Decisive in adhering to the delivery date or the delivery time is the notification of ready for dispatch or ready for pick up by us.
28. The delivery time commences with the sending of the order confirmation and is extended appropriately if the requirements defined in sec. 57 exist.
29. Partial deliveries are permitted to a reasonable extent. They are invoiced separately.
30. Production-related over-deliveries or short deliveries are permitted within a tolerance of up to 10% of the total order quantity. Consequently, the total price is adjusted accordingly.

Shipping and passing of risk

31. Goods that have been reported ready for dispatch must be immediately taken on by the Partner. Otherwise we are, at our own option, entitled to send the goods or to store them at the expense and risk of the Partner.
32. If there is no separate agreement, we choose the means of transport and the transport route.
33. Upon transfer to the railway, the forwarding agent or the carrier or with the beginning of storage however, upon leaving the factory or warehouse at the latest, the risk is passed to the Partner, even if we have taken on the delivery.

Delay in delivery

34. The delivery dates stated are non-binding, unless we explicitly confirmed them in writing or stipulated them as being binding, i.e. “binding delivery date”.

If we expect that the goods will not be able to be delivered within the delivery time, we will immediately inform the Partner of this in writing, explain the reasons for this as well as state the estimated time of delivery as far as possible.
35. If the delivery is delayed due to a circumstance listed in sec. 57 or the Partner’s actions or lack thereof, e.g. delayed transmission of required information or documents, an extension of the delivery time appropriate under the circumstances is granted.
36. The Partner is only entitled to withdraw from the agreement of individual agreement if we are responsible for not complying with the delivery date and the Partner has given us an appropriate respite that expired without results.

Retention of title

37. We reserve ownership of the delivered goods until all payments resulting from the contractual relationship with the Partner have been received.
38. The Partner has the right to sell these goods in the ordinary course of business, as long as the Partner meets its obligations resulting from the business relationship with us in a timely manner. However, the Partner can neither pledge or assign the goods subject to retention of title as collateral. The Partner is obligated to secure our rights in the credited reselling of the goods subject to retention of title.
39. In the event of breaches of duty on the part of the Partner, in particular default in payment, we are entitled to withdraw from the individual agreement and take back the goods after the fruitless expiration of a reasonable deadline set for the Partner to perform; the statutory provisions regarding the dispensability of setting a deadline remain unaffected. The Partner is obliged to surrender the goods.
40. The Partner assigns all claims and rights resulting from the sale or if applicable, a permitted renting of the goods by the Partner, for which we are entitled to property rights, to us as security. We herewith accept said assignment.
41. Any possible processing or treatment of the goods subject to retention of title is conducted by the Partner on our behalf. If the goods subject to retention of title are processed or intrinsically mixed with other objects not under our ownership, we acquire co-ownership to the new object proportional to the invoice value of the goods subject to retention of title compared to the other processed or mixed objects at the time of being processed or mixed.

If our goods are combined or intrinsically mixed with other movable objects to a uniform object and if the other object is considered the principle object, the Partner will transfer co-ownership to us proportionately, insofar as the principle object belongs to the Partner. The Partner safeguards the ownership or co-ownership for us. Moreover, the same applies to the object produced by processing, combining or mixing as does to the goods subject to the retention of title.

42. The Partner must inform us immediately of any enforcement measures by third parties against the goods subject to retention of title, against claims assigned to us or against other securities and hand over all documents necessary for intervention. This also applies to impairments of any other kind.
43. If the value of the existing securities exceeds the secured claims by more than 10% in total, we are obligated to release securities at our option at the Partner's request.

Defects as to quality

44. The condition of the goods solely complies with the stipulated technical delivery regulations. In the event that we must deliver according to our Partner's drawings, specifications, samples, etc., the Partner must bear the risk of suitability for the intended use. The time of the passing of risk is decisive for the condition of the goods according to sec. 33.
- 44 a. We adhere to the respectively effective legal requirements of the European Union (EU) and the Federal Republic of Germany when delivering our goods. For instance, this applies to – so far as relevant – the REACH Regulation (Regulation EC no. 1907/2006), the German Electrical and Electronic Equipment Act (ElektroG), the German Ordinance on Hazardous Substances in Electrical and Electronic Equipment (ElektroStoffV) and the German End-of-Life Vehicle Ordinance (AltfahrzeugV) as the German implementation of the EU Directives 2011/65/EU (RoHS 2), 2012/19/EU (WEEE Directive) as well as the EU Directive 2000/53/EC.

We will immediately inform the Partner of relevant changes to the goods, its supply availability, applicability or quality caused by legal requirements, particularly by the REACH Regulation and in individual cases, coordinate measures to be taken with the Partner.

45. We are not responsible for defects as to quality that arise through inappropriate or improper use, inaccurate assembly or commissioning by the Partner or a third party, common wear, incorrect or careless handling and we do not answer for the consequences of improper modifications or repair work by the Partner or a third party, which were conducted without our consent. The same applies to defects that merely reduce the value or efficiency in an irrelevant manner.
46. Material defect claims fall under the statute of limitations in 12 months. This does not apply if the law stipulates mandatory longer periods, particularly for defects in a building and for goods that were used for a building according to their common use and caused said deficiency. Sentence 1 also does not apply for damages resulting from fatal, physical or health injuries and for intent or gross negligence or any other kind of breach of essential contractual obligations (those are obligations, which must be fulfilled for proper execution of the agreement and which can typically be expected to be fulfilled by the contracting parties) by our legal representatives or executive employees and for a possible obligation to compensate for expenses for the purpose of supplementary performance according to § 439 sec. 3 of the German Civil Code (BGB).
47. The Partner's warranty rights require that the Partner properly fulfilled its duty of inspection and objection pursuant to § 377 of the German Commercial Code (HGB). If the acceptance of the goods or initial sample testing was stipulated, notices of defects are excluded, which the Partner would have been able to determine during diligent acceptance or initial sample testing.
48. We must be given the opportunity to examine the defect. Rejected goods must be immediately returned to us upon request; we bear the costs for transport if the notice of defect is justified. If the Partner does not fulfil these obligations or makes changes to the already rejected goods without our approval, the Partner forfeits possible material defect claims.
49. In the case of a justified notice of defect within the time limit, we will, at our own option, repair the rejected goods or supply flawless replacement.
50. If we do not fulfil these obligations or do not fulfil them according to contract within an appropriate period, the Partner can grant us a last deadline in writing, within which we must fulfil our obligations. After this deadline has expired without any results, the Partner can demand a price reduction, withdraw from the individual sales agreement or make the necessary repair itself or have the repair made by a third party at our expense and risk. A reimbursement of costs is excluded insofar as the expenses are higher because the goods were brought to another location after our delivery, unless this complies with the designated use of the goods.
51. The Partner's statutory recourse claims against us only apply to the extent that the Partner has not made any agreements with its customer, which exceed the statutory claims for defects. Furthermore, sec. 50 last sentence applies accordingly to the extent of the recourse claims.

Other claims, liability

52. Unless otherwise stipulated below, other and further claims of the Partner against us are excluded. This particularly applies to damage claims based on the breach of contractual obligations and tortious acts. We are not liable for damages that did not arise on the delivered goods. In particular, we are not liable for lost profit or other financial losses the Partner suffers.

53. The aforementioned liability limitations do not apply in the event of intent, gross negligence of our legal representatives or executive employees and in the case of a culpable breach of essential contractual obligations, i.e. obligations, which must be fulfilled for proper execution of the agreement and which can typically be expected to be fulfilled by the contracting parties. In the event of a culpable breach of essential contractual obligations, we are only liable for reasonably foreseeable damages typical for the agreement, except in cases of intent or gross negligence of our legal representatives or executive employees.
54. Furthermore, the liability limitation does not apply in cases in which liability is assumed according to the Product Liability Act personal injuries or material damages on privately used objects due to defects of the delivered goods. Moreover, it does apply in the event of fatal, physical or health injuries or if assured properties are absent, if and to the extent to which the assurance was exactly intended for the purpose of protecting the Partner against damages that were not caused on the delivered goods themselves.
- Finally, the liability limitation does not apply if we concluded a sales agreement with the Partner and we are obligated to compensate for the expenses required for the purpose of supplementary performance as per § 439 sec. 3 of the German Civil Code (BGB).
55. Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, workers, co-workers, legal representatives and vicarious agents.
56. This does not affect the laws on the burden of proof.

Force majeure

57. Force majeure, labour disputes, riots, military conflicts, terrorist attacks, official measures, absence of deliveries from our suppliers, epidemics and other unforeseeable, unavoidable and severe events relieve the contracting parties from their liability for the duration of the disruption and to the extent of its/their effect. This also applies if these events occur at a point in time in which the concerned contracting party is in default, unless the contracting party caused the delay with intent or gross negligence. Within reasonable bounds, the contracting parties are obligated to immediately provide the necessary information and to adapt their obligations to the altered circumstances in good faith.

Place of fulfilment, place of jurisdiction and applicable law

58. Unless otherwise stipulated, our registered office is the place of fulfilment.
59. The place of jurisdiction for all legal disputes resulting from or in connection with an agreement or individual agreement, including those related to payment of bills of exchange and checks, is our registered office. We are also entitled to file actions with the court having jurisdiction over the Partner's registered office.
60. This contractual relationship is solely subject to the laws of the Federal Republic of Germany.

The application of the UN Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG - "Viennese UN Purchase Law") is excluded.