

General Business Terms and Conditions of BEG Bürkle GmbH & Co. KG

§ 1 General Provisions

- (1) These General Business Terms and Conditions (AGB) apply to all our business relations with our customers ("Customer"), in particular to contracts for the sale and/or supply of movable things ("Goods"). The AGB only apply if the Customer is an entrepreneur (sec. 14 German Civil Code (BGB)), a legal person under public law or a special fund under public law.
- (2) Unless otherwise agreed, the AGB in the version applicable at the time when the order is placed by the Customer or in the version last notified to the Customer in text form shall also apply to similar future contracts without our having to refer to them again each time a similar contract is entered into.
- (3) In the relationship to our Customers solely our AGB shall apply. Deviating, conflicting or supplementary general terms and conditions of business of the Customer shall only form a component part of the contract if and to the extent that we have explicitly agreed to the application thereof. This consent requirement shall apply in any event, in particular also if we execute a contract without making a reservation although we had knowledge of the general terms and conditions of business of the Customer.
- (4) Any individual agreements entered into with the Customer in an individual case (including ancillary agreements, addenda and amendments) shall take precedence over these AGB. A contract in writing and/or confirmation in writing shall determine the content of such agreements subject to proof to the contrary.
- (5) Declarations and notices to be delivered to us by the Customer after conclusion of the contract (e.g. setting time limits, notifications of defects, a declaration of rescission or reduction of the purchase price [*Rücktritt* or *Minderung*]), must be given in text or written form in order to be effective.
- (6) References to the application of statutory provisions shall be significant only for the purpose of clarification. Even without such clarification the statutory provisions therefore apply except to the extent amended by or explicitly excluded in these AGB.

§ 2 Conclusion of the contract, subject matter of the contract, security

- (1) Our offers are subject to change and are non-binding. This also applies if we provide the Customer with catalogues, technical documentation (e.g. drawings, plans, calculations, costing, and references to DIN standards), other product descriptions or documents – including in electronic form – in and to which we reserve property rights and copyrights.
- (2) The Customer's purchase order for the Goods is deemed to constitute a binding offer to enter into a contract. Unless otherwise set forth in the purchase order, we have the right to accept this offer to enter into a contract within 2 weeks after the date of receipt by us. Our acceptance can be given either in writing (e.g. by means of an order confirmation), in text form or by delivering the Goods to the Customer.
- (3) The information we provide on the subject matter of the supply or service (e.g. weights, measures, utility values, resilience, tolerances and technical data) and our representations thereof (e.g. drawings and illustrations) are only approximations unless the usability for the purpose intended by contract requires exact conformity. These are not guaranteed characteristics but descriptions or designations of the supply or service. Variations and deviations customary in the trade which are due to legal regulations or represent technical improvements, and the replacement of components (ingredients, substances etc.) by equivalent components, are permissible insofar as they do not impair the usability for the purpose intended by contract.
- (4) We reserve the ownership and copyright in and to all the quotations and cost estimates given by us and in and to the formulae, specifications, recipes and in drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and auxiliary devices made available to the Customer. Without our explicit consent, the Customer may not make these items available to third parties as such nor may the Customer

make the content thereof accessible to third parties, the Customer may not publicize them, may not use or duplicate them itself or through third parties. If we so request, the Customer shall return these items to us in full and destroy any copies that may have been made thereof if they are no longer required by the Customer in the normal course of business or if negotiations do not lead to the conclusion of a contract.

- (5) The Goods supplied by us comply with the safety regulations of the Association of German Electrical Engineers. Deviations from this are admissible provided that the same level of safety in accordance with the state of the art is otherwise guaranteed.

§ 3 Delivery period and default in delivery, collaboration by the Customer

- (1) The information we provide on the delivery period is non-binding unless a delivery period is individually agreed or indicated by us on acceptance of the purchase order.
- (2) If we cannot comply with binding delivery periods for reasons which we are not responsible for (unavailability of performance), we shall inform the Customer thereof without undue delay and simultaneously advise of the expected new delivery period. If performance is not available during the course of the new delivery period either, we have the right to withdraw from the contract in whole or in part; we shall reimburse without undue delay any payment already made by the Customer. A case of unavailability of performance within the meaning of this sub-section is deemed to be, in particular, our own supplier's failure to deliver to us on time if we have entered into a matching-cover transaction [*kongruentes Deckungsgeschäft*], if neither we nor our supplier are/is at fault, or if we are not obliged to procure in an individual case.
- (3) The occurrence of our default in delivery shall be determined by the provisions of statute. In any event a warning notice is required from the Customer, however.
- (4) The Customer's rights pursuant to section 8 of these AGB and our statutory rights, in particular in the event of exclusion of the obligation to perform (e.g. because of impossibility of performance or because performance is not reasonable and/or due to supplementary performance), shall remain unaffected.
- (5) If the Customer has to provide material, samples, etc. such provision shall be at the Customer's expense. If the Customer provides too little material or defective material or if such provision is delayed, the Customer shall bear the additional costs arising as a result thereof.

§ 4 Delivery, passing of risk, default of acceptance

- (1) Delivery shall be effected ex works; the factory is also the place of performance of the supply and of any supplementary performance. The Goods shall be dispatched to a different place of destination at the Customer's request and expense (sale involving the carriage of Goods [*Versendungskauf*]). Except as otherwise agreed, we have the right to determine the type of shipping (in particular the transport company, shipping route, packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer at the latest when the Goods are handed over. In the event of a sale involving the carriage of Goods, the risk of accidental loss and accidental deterioration of the Goods and the risk of delay already passes when the Goods are delivered to the carrier, the freight forwarder or to the person or organization otherwise determined to conduct the shipping. If an acceptance procedure has been agreed, this determines the passing of risk. Also in other respects the statutory provisions of the law relating to contracts for work and services shall apply accordingly to the acceptance agreed. If the Customer is in default of acceptance, this is tantamount to handover and/or acceptance.
- (3) If the Customer is in default of acceptance, fails to carry out collaborative action, or if our supply is delayed for other reasons for which the Customer is responsible, we have the right to demand compensation of the damage arising as a result, including additional expenses (e.g. storage costs).

- (4) Notwithstanding the ruling in sub-sec. 2 above and in § 3 sub-sec. 5 we can demand of the Customer that the delivery and performance periods be extended by or that the delivery and performance dates be postponed for the period of time in which the Customer fails to perform its contractual obligations, in particular its collaborative actions.

§ 5 Prices and terms of payment

- (1) Unless otherwise agreed in an individual case, our list prices current on the date on which the contract is concluded shall apply; these are the ex-works prices exclusive of value added tax (VAT) and packaging.
- (2) If the Customer wishes to have the Goods shipped (sale involving the carriage of Goods, cf. § 4 sub-sec. 1 above), the Customer shall bear the transport costs from the factory and the costs of any transport insurance desired by the Customer. Any customs, charges, taxes and other public levies shall be borne by the Customer.
- (3) The purchase price shall fall due and be payable within 14 days of the date of the invoice and delivery of the Goods with no deduction. Supplies of spare parts and repairs are payable immediately upon supply of the spare parts or of the repaired Goods with no deduction. We have the right, at any time, to effect delivery in whole or in part against advance payment only, even in the context of a current and on-going business relationship. We shall make a corresponding reservation in the order confirmation at the latest.
- (4) Payments with the effect of discharging the debt shall be made solely to VR FACTOREM GmbH, Ludwig-Erhard-Strasse 30-34, 65760 Eschborn, to whom we have assigned our current and future claims under our business relationship.
- (5) Bills of exchange and cheques shall only be accepted on the basis of an explicit agreement and only as payment and subject to our acceptance in each individual case. There is no right to deduct a discount if payment is made by bill of exchange. Any costs or other charges shall be borne by the Customer and are due for payment immediately.
- (6) The Customer shall be in default immediately upon expiry of the above payment period. Interest at the statutory rate of default interest applying at the time shall be payable on the purchase price during the period of default. We reserve the right to claim further default damage. Our right to claim commercial interest from the due date from merchants shall remain unaffected (sec. 353 German Commercial Code (HGB)).
- (7) The Customer only has the right of offset or the right of retention insofar as the Customer's claim has been decided by a final and non-appealable judgment of a court of law or is undisputed. In the event of defects in the supply, the rights of the Customer, in particular those pursuant to § 7 sub-sec. 3 sentence 2 of these AGB, shall remain unaffected.
- (8) If, after the contract has been concluded, it should become apparent (e.g. due to an application to open insolvency proceedings) that our claim to payment of the purchase price is in jeopardy due to the Customer's lack of ability to pay, then in accordance with the provisions of statute we have the right to refuse to perform and to rescind the contract (sec. 321 BGB) – if appropriate after setting a time limit.

§ 6 Retention of title

- (1) Pending payment in full of all our current and future claims under the purchase contract and an on-going business relationship (secured claims) we reserve the title in and to the Goods sold.
- (2) Prior to being paid for in full, the Goods subject to retention of title may neither be pledged to third parties nor transferred as security. The Customer shall advise us in writing without undue delay if an application has been filed to open insolvency proceedings or insofar as third parties have attached the Goods belonging to us (e.g. seizures).
- (3) In the event of behaviour by the Customer in breach of contract, in particular if the Customer fails to pay the purchase price due, we have the right to rescind the contract in accordance with the provisions of statute and to demand that the Goods be surrendered by virtue of the retention of title and the rescission. If the Customer

fails to pay the purchase price due, we may only assert these rights if we have already set the Customer a reasonable period of time for payment which expired to no avail, or if setting such a time limit is dispensable in accordance with the provisions of statute.

- (4) Pending revocation pursuant to sub-sec. (c) below, the Customer has the right to resell and/or process the Goods subject to retention of title in the ordinary course of its business. In this case the provisions set forth below shall apply in addition.
 - (a) The retention of title shall cover the full value of the products created through processing, mixing or combining our Goods, whereby we shall be considered to be the manufacturer. If, in the event of the Goods being processed, mixed or combined with products of third parties, their property right remains upheld, we shall acquire joint title in proportion to the invoice values of the Goods processed, mixed or combined. In all other respects the same shall apply to the product then created as applies to the Goods supplied subject to retention of title.
 - (b) The Customer assigns to us as security now already the claims against third parties arising from the resale of the Goods or of the product created, in full or in the amount of our joint ownership share in accordance with the above sub-section. We accept the assignment. The obligations of the Customer set out in sub-section 2 shall also apply with regard to the claims assigned.
 - (c) The Customer remains entitled to collect the claim in addition to us. We undertake not to collect the claim as long as the Customer complies with its payment obligations to us, provided that there is no lack of financial capability on the Customer's part and we do not assert our claim to retention of title by exercising a right pursuant to sub-section 3. If this is the case, however, we can demand that the Customer advises us of the claims assigned and the debtors thereof, provide all the information required for the collection, hand over the corresponding documents and notify the debtors (third parties) of the assignment. In addition, in such a case, we have the right to revoke the Customer's authorization to resell and process the Goods subject to retention of title.
 - (d) If the realizable value of the security exceeds our claims by over 10%, we shall release security of our choice if the Customer so requests.

§ 7 Claims on account of defects

- (1) The provisions of statute apply to the rights of the Customer in the event of defects as to quality and defects of title except insofar as otherwise provided below.
- (2) The precondition for defect claims by the Customer is for the Customer to have complied with its statutory duties to examine the Goods and object to defects (secs. 377, 381 HGB). We must be notified in writing without undue delay if a defect becomes apparent during the examination or at a later date. Notification is deemed to be without undue delay if made within two weeks, whereby the time limit is deemed met if the notification is dispatched on time. Notwithstanding this duty to examine the Goods and object to defects, the Customer shall give notification of any obvious defects (including incorrect deliveries and short shipment) in writing within two weeks of delivery, whereby here too the time limit is deemed met if the notification is dispatched on time. If the Customer fails to conduct a proper examination and/or notify of the defect, our liability shall be excluded in respect of the non-notified defect.
- (3) We have the right to make the supplementary performance owed conditional upon the Customer's payment of the purchase price due. However, the Customer has the right to withhold an appropriate portion of the purchase price corresponding to the defect.
- (4) The Customer shall accord to us the time and opportunity necessary to conduct the supplementary performance owed; in particular the Customer shall deliver to us for examination purposes the Goods complained of. If substitute Goods are supplied, the Customer shall return the defective thing to us in accordance with the provisions of statute.

- (5) Even in the event of defects, claims by the Customer for damages or compensation of wasted expenditure shall only exist in accordance with the provisions of § 8 and are otherwise excluded.
- (6) We do not assume any liability for material provided by the Customer itself or for material procured on the Customer's instructions or for specifications made by the Customer.

§ 8 Other liability

- (1) In the event of a breach of contractual or non-contractual obligations, our liability shall be in accordance with the provisions of statute except insofar as otherwise provided in these AGB, including the terms set forth herein below.
- (2) We are liable for damages – regardless of the legal ground – with respect to fault-based liability in the event of intention and gross negligence [*Vorsatz und grobe Fahrlässigkeit*]. In case of minor negligence [*einfache Fahrlässigkeit*] we shall be liable only as follows, subject to a less severe liability standard in accordance with statutory provisions (e.g. for care in one's own matters [*diligentia quam in suis rebus*]):
 - (a) for damage resulting from injury to life or limb or impairment to health,
 - (b) for damage resulting from a not inconsiderable violation of a material contractual obligation (an obligation which, when performed, makes the proper execution of the contract at all possible and which the contract partner may and does regularly rely on compliance with); in this case our liability is, however, limited to compensation of the foreseeable damage which can typically occur.
- (3) The limitations of liability ensuing from sub-sec. 2 above shall also apply in the event of violations of duty by or in favour of persons whose fault we are responsible for in accordance with the provisions of statute. They shall not apply insofar as we have maliciously concealed a defect or have provided a guarantee for the characteristics of the Goods, nor shall they apply to claims by the Customer under the German product liability act.
- (4) The Customer may only withdraw from or cancel the contract due to a violation of duty which does not constitute a defect if we are responsible for the violation of duty. In all other respects the statutory requirements and legal consequences shall apply.

§ 9 Statute of limitations

- (1) In derogation from sec. 438 (1) no. 3 BGB, the general limitation period for claims resulting from defects as to quality and defects of title shall be one year from the date of the passing of risk.
- (2) The above limitation period of sales law shall also apply to contractual and non-contractual claims for damages by the Customer which are based on a defect in the Goods unless the application of the normal statutory limitation period (secs. 195 and 199 BGB) would lead to a shorter limitation period in an individual case. Claims for damages by the Customer pursuant to § 8 sub-sec. 2 sentence 1 and sentence 2 a) and under the German product liability act shall, however, be solely subject to the statutory limitation periods.

§ 10 Protective rights

- (1) With regard to Goods which we produce in accordance with drawings, models, samples or by using items provided by the Customer, the Customer warrants to us that no third-party protective rights are violated thereby. To this extent the Customer indemnifies us from and against any claims by third parties on account of the violation of protective rights and shall recompense us for any damage and for costs and expenses. If we are prohibited from manufacturing or supplying Goods in accordance with sentence 1 above by a third party invoking its own protective right, we are relieved of our obligation to perform until further notice and/or we have the right to discontinue the work.
- (2) If software which we hold the copyrights to is included in the scope of our supply, the Customer shall obtain the non-exclusive and non-transferable right (simple license) to use the software included in the supply on

the hardware supplied by us. If the Customer resells our supplied Goods, this right of use shall be transferred to the respective acquirer.

- (3) If software is included in the scope of our supply which we do not hold the copyrights to, the license terms and the terms and conditions of supply of the respective software manufacturer shall apply.

§ 11 Export and disposal

- (1) The export of our Goods can – for example due to the nature thereof or their intended purpose – be subject to an export ban with or without reservation of approval. When exporting the Goods procured from us, the Customer shall comply with the export regulations respectively applicable.
- (2) The Goods supplied by us are B2B appliances within the meaning of the German Electrical and Electronic Equipment Act [*Elektro- und Elektronikgerätegesetz*]. After the end of use, the Customer shall either have the appliances we supplied disposed of at the customer's own expense by a professional operator in accordance with the provisions of the German Electrical and Electronic Equipment Act or return them to us without charge. We point out that disposal via recycling yards or similar organizations is not permitted.

§ 12 Choice of law and jurisdiction

- (1) The laws of the Federal Republic of Germany shall apply to these AGB and to the contractual relationship between the Customer and us, excluding uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods.
- (2) If the Customer is a merchant within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, the courts with jurisdiction for Herrenberg, Germany, shall have exclusive and international jurisdiction for all disputes arising directly or indirectly from the contractual relationship. This shall apply *mutatis mutandis* if the Customer is an entrepreneur within the meaning of sec. 14 BGB. However, in all cases we also have the right to bring an action at the place of performance of the supply obligation in accordance with these AGB or with a prior-ranking individual agreement or at the Customer's general place of jurisdiction. Provisions of statute that take precedence, in particular governing exclusive jurisdiction, shall remain unaffected.