

General Terms and Conditions of Balver Zinn Josef Jost GmbH & Co. KG

§ 1 Scope

The following General Terms and Conditions apply exclusively in business relations with entrepreneurs within the meaning of § 14 German Civil Code (BGB), legal persons under public law and special assets under public law.

§ 2 Applicable law

(1) The binding, directly applicable law of the European Union and the Federal Republic of Germany shall always prevail.

(2) In addition, for all disputes arising from contracts concluded with us in the field of dispositive law, first any individual agreements, second these General Terms and Conditions and finally the dispositive law applicable in the Federal Republic of Germany except of the UN Convention on Contracts for the International Sale of Goods (CISG) shall apply.

§ 3 Language of the contract

(1) The contract language is German.

(2) This shall also apply if negotiations or other correspondence are conducted in another language or if the contract is written in another language.

§ 4 Deviating terms and conditions of the contractual partner

Deviating terms and conditions of the contractual partner only apply with our consent by individual agreement.

§ 5 Conclusion of contract / commercial confirmation letter

(1) Images of our products or descriptions of our services in any advertisement, including in connection with quotations of prices, do not constitute an offer aimed at the conclusion of a contract, but is an invitation to submit an offer by our customers. By ordering goods or ordering services, the customer makes a legally binding offer. The customer is bound to his offer for 7 calendar days. A contract is concluded when we accept the offer of the customer. This

is usually done by confirmation of the order in text form, but can also be done by delivery of the goods.

(2) Our silence on any commercial confirmation letter from the contractual partner or negotiating partner shall not result in a contract or a modification of a concluded contract. Changes to a concluded contract always require our explicit consent.

§ 6 Services in the Preliminary Stage of a Contract

If we manufacture sample workpieces at your request for the preparation of a contract or its execution, we are entitled to demand the usual remuneration, unless otherwise expressly agreed beforehand.

§ 7 Prices

(1) In the absence of an individual agreement on a price, our price lists valid at the time of conclusion of the contract shall apply, provided that they have been disclosed to the contractual partner before or at the time of conclusion of the contract or have been published on our homepage.

(2) Our prices are ex works prices. They apply plus statutory VAT and plus freight and packaging.

(3) Discounts may only be deducted by prior agreement.

§ 8 Reservation of price adjustment

(1) If goods are to be delivered later than 3 months from the date of our order confirmation and if the producer price index for industrial products of the German Federal Statistical Office increases by more than 3 percent from the date of the order confirmation to the date of delivery, we are entitled to adjust the price.

(2) Adjustment shall be made on a reasonable basis. It shall not exceed the percentage of the increase in the index and shall not exceed an increase of 5 %.

§ 9 Place of delivery and delivery deadlines

(1) Unless otherwise agreed, delivery shall be fulfilled ex works.

(2) Delivery deadlines require an explicit agreement. If delivery is to be made to a third party with registered office in the Federal Republic of Germany on a certain date, the delivery period shall, in the absence of any other individual agreement, be met by timely handing over to the carrier/forwarding agent 3 working days before the desired delivery date with the third party.

(3) A deadline agreed with us for our services shall only remain binding if the contractual partner has also previously complied with the time agreed with him for his obligations to cooperate, insofar as his obligations to cooperate are organisational prerequisites for the timely fulfilment of our obligation to provide services.

§ 10 Reservation of self-supply

(1) If timely delivery becomes impossible as a result of non-delivery by our pre-suppliers, our obligation to deliver shall lapse if we are not responsible for the delay.

(2) In this case, we shall not be liable for damages. Payments will be refunded by us immediately.

§ 11 Passing of risk

If the goods are to be shipped to our contractual partner or to a third party at the request of our contractual partner, the risk of deterioration and accidental loss shall pass to the contractual partner as soon as we have handed over the delivery to the haulage contractor, the carrier or the person or institution otherwise designated for shipment. This applies regardless of who bears the freight costs.

§ 12 Duties of inspection and complaint

(1) The inspection and complaint obligations of § 377 German Commercial Code (HGB) apply according to these General Terms and Conditions also to entrepreneurs who are not merchants within the meaning of the HGB as well as to legal persons under public law and

special assets under public law. They do not apply to small businesses within the meaning of § 19 of the German Sales Tax Act.

(2) The contractual partner shall examine the goods immediately after we have handed them over for dispatch in accordance with § 11, as soon as this is possible in the normal course of business. If, according to the circumstances of the individual case, only a random check is required, the Contractor shall, if this check reveals a defect, inspect the entire consignment.

(3) If a defect appears, the contractual partner must notify us immediately. If the contracting party fails to notify us in due time, the goods shall be deemed to have been approved, unless the defect was not recognizable. If a non-recognizable defect appears later, the notification must be made immediately after discovery; otherwise, the goods shall be deemed to have been approved.

(4) Different from § 377 HGB, the notice of defects must be made in text form, otherwise it is invalid. Also different from § 377 HGB, decisive for the timeliness is the time of our receipt of the notice.

§ 13 Prohibition of set-off

Offsetting with counterclaims is only admissible if they are undisputed, legally established or ready for decision at the time of the statement of offsetting.

§ 14 Intellectual property rights of third parties

(1) If a work is to be produced according to the specifications of the contractual partner, the contractual partner shall indemnify us from all possible claims of third parties and all necessary costs, such as the infringement of intellectual property rights of third parties, in particular the infringement of patents and registered patterns of third parties or related intellectual property rights should result from the processing of the order, including its fulfilment.

(2) This also includes the costs of our legal representation, if necessary, in the legal amount.

§ 15 Retention of title

(1) The delivered goods shall remain our property until the agreed remuneration has been paid completely. It may not be pledged or assigned as surety beforehand. The contractual partner is only entitled and authorised to resell the goods on condition that the purchase price claim from the resale is transferred to us.

(2) The contractual partner hereby assigns to us its claims arising from the resale of the goods against its customers. We hereby accept this assignment. On all goods delivered to the contractual partner, the latter hereby orders us a pledge with effect from the transfer of risk within the meaning of § 11 of these GTC.

§ 16 Claims for defects and liability

(1) Defects in part of the delivered goods shall not entitle the contracting party to object to the entire delivery, unless the latter is no longer of interest to the contracting party as a result of the defect of the partial delivery.

(2) We shall be liable without limitation in accordance with the statutory provisions for damages resulting from injury to life, limb or health, in case of acceptance of a guarantee for the quality of the work and in case of damages in accordance with the Product Liability Act.

(3) We are also fully liable in accordance with the statutory provisions in all cases of intent and gross negligence as well as in the event of fraudulent concealment of a defect.

(4) Except of a case of para. 2 or 3, our liability in the event of breach of essential contractual obligations and slight negligence shall be limited to the foreseeable damage typical of the contract. Essential contractual obligations are obligations the breach of which would endanger the achievement of the contractual purpose as well as obligations the fulfilment of which makes the proper execution of the contract possible in the first place and on which the contractual partner may regularly rely.

(5) Except of a case of para. 2 or 3, in the event of a breach of minor contractual obligations, liability for slightly negligent breaches of duty is excluded.

(6) The limitation period for claims for defects is one year from receipt of the goods. This does not apply to all cases of para. 2 and para. 3 as well as all claims for damages, including any claims for damages due to non-fulfilment of claims for defects. Furthermore, this does not apply in the event that delivered items, which have been used for a building according to their usual use, have caused its defectiveness. In this respect, the statutory limitation provisions apply.

(7) If the subject of the contract is the sale of a second-hand item any liability is excluded unless there is a case of para. 2 and para. 3.

§ 17 Place of jurisdiction and place of performance

(1) If the contracting party is a merchant, a legal entity under public law or a special fund under public law, Balve in North Rhine-Westphalia shall be the place of jurisdiction for all disputes arising from contracts concluded with us to which these General Terms and Conditions apply and the place of performance for all reciprocal claims arising from such contracts.

(2) The place of jurisdiction referred to in paragraph 1 shall exist alongside all legal places of jurisdiction.

(3) Paragraphs 1 and 2 shall not apply if the law provides another exclusive place of jurisdiction.

© **BWL-Rechtsanwälte und Notare 2023**