

General Terms and Conditions of Sale of H. & J. Brüggen KG

§ 1 Scope of application

- 1.1 These General Terms and Conditions of H. & J. Brüggen KG (hereinafter referred to as "**Brüggen**") apply exclusively to all purchase and delivery contracts between Brüggen and its customers¹.
- 1.2 Conflicting or deviating terms and conditions of the customer are not recognized unless Brüggen expressly agrees to their validity in writing.
- 1.3 These General Terms and Conditions also apply if Brüggen carries out the contractually owed delivery without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from these General Terms and Conditions.
- 1.4 These General Terms and Conditions only apply to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB) and legal entities under public law or special funds under public law.
- 1.5 No verbal collateral agreements have been made. Agreements that deviate from or supplement these General Terms and Conditions must be set out in writing.

§ 2 Conclusion of contract

- 2.1 Offers from Brüggen are non-binding, unless expressly stated otherwise.
- 2.2 If an offer from Brüggen stipulates a deadline for acceptance or a commitment period, this is binding. A delayed acceptance by the customer is considered a new offer, which in turn requires acceptance by Brüggen.
- 2.3 Orders placed by the customer are considered a binding contractual offer and require acceptance by Brüggen in the form of an order confirmation. This order confirmation is decisive for the type and scope of the contractual performance obligations. Acceptance can also be declared by delivery of the goods to the customer.
- 2.4 Brüggen is only obliged to fulfil the contract towards the customer. Subject to separate agreements in individual cases, third parties not involved in the formation of the contract, in particular customers of the customer, are not entitled to demand delivery of the goods to themselves or to assert other claims arising from the contract concluded between Brüggen and the customer.

§ 3 Prices

- 3.1 Subject to deviating agreements in individual cases, Brüggen's prices are net prices plus statutory VAT. Should a change in the statutory sales tax occur between conclusion of the contract and delivery, the sales tax valid on the day of delivery will be charged and the customer will be charged or reimbursed for any resulting difference.
- 3.2 The deduction of a discount is only permitted in the case of a separate written agreement.
- 3.3 Packaging and/or freight costs shall be invoiced separately, unless otherwise agreed. In accordance with the agreement concluded, the customer shall also bear the costs for unused individual packaging at the end of the contract. In the case of deliveries abroad, the customer shall bear any customs duties and/or import taxes incurred.
- 3.4 Changes in raw materials, wages, energy and/or other costs that could not be foreseen by Brüggen at the time the contract was concluded and for which Brüggen is not responsible authorize Brüggen to make corresponding price adjustments.
- 3.5 If there are more than four months between the conclusion of the contract and the delivery of the goods, Brüggen is entitled to raise its prices to the respective market price appropriately, but by a maximum of 5 %.
- 3.6 In the case of partial deliveries, each delivery may be invoiced separately.

§ 4 Terms of payment

- 4.1 The terms of payment result in detail from the agreement between Brüggen and the customer.
- 4.2 Invoices from Brüggen are due for payment immediately and are to be settled without deduction. If the customer is in default of payment, Brüggen is entitled to charge default interest at the statutory rate (currently 9 percentage points above the applicable base interest rate) for the duration of the default. Brüggen expressly reserves the right to claim further damages.
- 4.3 If it becomes apparent after the conclusion of the contract that the claim for payment to which Brüggen is entitled is jeopardised by the customer's inability to pay, in particular by a lack of creditworthiness, Brüggen is entitled, after setting a reasonable deadline, to demand immediate security or cash payment without any deduction for all goods delivered and not yet paid for and to demand advance payment for all goods still to be delivered as well as to withhold goods still to be delivered. If the customer does not fulfil the above obligations in due time, Brüggen has the right to refuse delivery and to withdraw from the contract as well as to claim damages.
- 4.4 The customer may only offset counterclaims that are undisputed, legally established or ready for judgement. The customer shall not be entitled to a right of retention due to claims that do not originate from the same contractual relationship. Payments shall always be used to settle the oldest debt item due plus the default interest due on it.

§ 5 Delivery

- 5.1 The scope of the delivery owed by Brüggen results in detail from the contractual agreement with the customer.
- 5.2 Any documents provided by the customer are binding for the execution of the delivery. Delays and additional costs incurred because the information in the documents is incorrect or incomplete shall be borne by the customer.
- 5.3 Brüggen is only authorised to make partial deliveries if these are of interest to the customer according to the purpose of the contract and the customer does not incur any significant additional expenses as a result.

§ 6 Delivery time and delivery delay

- 6.1 Delivery dates or delivery periods are generally non-binding unless they are expressly designated as "binding" by the contracting parties.
 - a) A binding delivery date or a binding delivery period begins with the conclusion of the contract and is subject to the proviso that Brüggen is supplied correctly, completely and on time by its suppliers with whom Brüggen has concluded corresponding covering transactions on the occasion of the contract concluded with the customer. Brüggen is authorized to set a specific delivery date within a binding delivery period.

¹ Gender note: For reasons of better readability, the generic masculine has been chosen for the term "customer"; in the interests of equal treatment, all genders are nevertheless included.

- b) The delivery deadline is met if the goods have left the Brügggen factory by the end of the deadline or if Brügggen has informed the customer that the goods are ready for dispatch.
 - c) The delivery period shall not commence as long as the customer has not properly fulfilled the obligations incumbent upon it, such as the provision of necessary documents, releases, approvals and licenses, the opening of letters of credit and the payment of a deposit or the provision of a payment guarantee.
- 6.2 The customer can request Brügggen to deliver four weeks after exceeding a non-binding delivery date or a non-binding delivery period. Upon receipt of the request, Brügggen is in default.
- a) If the customer wishes to withdraw from the contract and/or claim damages instead of performance, he must set Brügggen a reasonable deadline for delivery after the non-binding delivery date or the non-binding delivery period has been exceeded. Claims for damages are limited in accordance with § 9.
 - b) If Brügggen is unable to deliver by chance during the delay, Brügggen's liability for damages is again limited in accordance with § 9. Brügggen is not liable if the damage would have occurred even if delivery had been made on time.
- 6.3 When Brügggen is prevented from fulfilling its performance obligations on time due to circumstances that only became apparent after conclusion of the contract and for which Brügggen is not responsible, in particular due to force majeure, natural disasters, pandemics, industrial action, official interventions, supply difficulties, unforeseeable lack of timely delivery by an upstream supplier with regard to an underlying covering transaction (e.g. due to insolvency of the upstream supplier), traffic disruptions, extraordinary traffic conditions, unforeseeable operational disruptions or for other similar reasons, the performance obligations shall be suspended. If Brügggen is prevented from the timely fulfilment of its performance obligations due to unforeseeable lack of timely delivery by an upstream supplier with regard to an underlying covering transaction (e.g. due to the insolvency of the upstream supplier), traffic disruptions, extraordinary traffic conditions, unforeseeable operational disruptions or for other similar reasons, the performance obligation shall be suspended for the duration of the hindrance and to the extent of its effect. Brügggen does not assume any procurement risk in this respect.
- a) Brügggen must inform the customer immediately that the temporary obstruction or impossibility of performance has occurred and for what reasons.
 - b) Brügggen will - as far as possible - immediately endeavor to procure a replacement. Should Brügggen's costs increase in the event of a replacement procurement, Brügggen is entitled to make price adjustments to the customer. Brügggen will also inform the customer immediately in advance about the possibility of a replacement procurement and about any price adjustments.
 - c) If the suspension of the performance obligation or a price adjustment in accordance with § 6.3b) is not reasonable for the customer, the customer shall be entitled to withdraw from the contract after the expiry of a reasonable deadline to be set by the customer. A deadline is not required in the cases specified by law (e.g. §§ 323 (2), 323 (4), 326 (5) BGB and § 376 HGB).
 - d) Brügggen is entitled to claim non-performance or delayed performance on the grounds of this § 6.3 is not responsible. If a partial performance has been effected, the customer can only withdraw from the entire contract if he is no longer interested in the partial performance.
- 6.4 In agreement with the customer, Brügggen is authorized to deliver earlier than the agreed delivery date.

§ 7 Transfer of risk and acceptance

- 7.1 Unless otherwise agreed, delivery "ex domestic works" is agreed. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer when the goods are handed over to the shipping agent, irrespective of who bears the freight costs. The same shall apply upon notification of readiness for dispatch if delivery is not made for reasons for which the customer is responsible.
- 7.2 Insofar as an acceptance has to take place, this is decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after notification from Brügggen that the goods are ready for acceptance.
- 7.3 If dispatch or acceptance is delayed or does not take place due to circumstances for which Brügggen is not responsible, the risk of accidental loss and accidental deterioration is transferred to the customer from the day of notification of readiness for dispatch or acceptance.

§ 8 Obligation to give notice of defects, rights due to defects

- 8.1 The customer's rights in respect of defects presuppose that he has properly fulfilled his obligations to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code). The customer must inspect the delivered goods immediately upon receipt for conformity with the contract. Shortages and incorrect deliveries as well as recognizable defects in the goods must be reported to Brügggen immediately in writing, stating the complaint. Defects that only become recognizable later are to be reported in the described form immediately after they become recognizable.
- 8.2 In the event of complaints, the customer must immediately give Brügggen the opportunity to inspect the rejected goods; in particular, the rejected goods must be made available to Brügggen upon request and at Brügggen's expense. In the case of unjustified complaints, Brügggen reserves the right to charge the customer for the costs incurred for transport and inspection.
- 8.3 In the event of any defects in the goods, the customer shall be entitled to the statutory claims in accordance with the following provisions:
 - a) In the event of a rectification of defects, Brügggen is obliged to bear all expenses necessary for the purpose of rectifying the defect, in particular transport, travel, labour and material costs; Brügggen will not bear the aforementioned costs if they have been incurred because the goods delivered by Brügggen have been taken to a place other than the agreed place of performance after the transfer of risk. This does not apply if the transport of the goods corresponds to their intended use and this is known to Brügggen.
 - b) The customer is only entitled to a cancellation of the contract or a reduction of the purchase price if the defect cannot be remedied by Brügggen within a reasonable period of time to be set by the customer or if the supplementary performance would involve disproportionately high costs for Brügggen, is unreasonable or is to be considered a failure for other reasons. However, the customer has no right of cancellation in the case of minor defects. The customer has no right of cancellation.
 - c) Brügggen's liability for damages is limited in accordance with § 9. The same applies to the claim for reimbursement of expenses.
 - d) In the event of fraudulent concealment of defects or the assumption of a guarantee of quality, further claims of the customer shall remain unaffected.
 - e) Brügggen is not liable for defects caused by unsuitable or improper use or processing of the goods.
 - f) Warranty claims of the customer and congruent competing claims arising from non-contractual liability shall become time-barred one year after the transfer of risk in accordance with § 7. In the case of claims for damages in the cases of § 9.1 sentence 1 and § 9.2 sentence 2, the statutory limitation period shall apply.

§ 9 Liability for damages

- 9.1 Brügggen is liable for damages, regardless of the legal grounds, only in the case of intent or gross negligence on the part of its organs or assistants. The above exclusion of liability for simple negligence does not apply to the violation of essential contractual obligations. In the event of a breach of material contractual obligations, liability shall be limited to typical, foreseeable damage. A material contractual obligation is one whose fulfillment is essential for the proper performance of the contract or on whose compliance the customer has relied and may rely.
- 9.2 Liability for damages due to a guarantee assumed by Brügggen as well as due to liability under the Product Liability Act or other mandatory standards remains unaffected by the above provisions. The same applies in the event of damage caused by injury to life, body or health.
- 9.3 Brügggen's contractual and non-contractual liability for damages is limited in content and scope to the product liability insurance it has taken out. The cover amounts to EUR 12,500,000.00 for personal injury and EUR 12,500,000.00 for property damage and financial loss.

§ 10 Retention of title

- 10.1 Brügggen reserves the right of ownership of the delivered goods (reserved goods) until all present and future claims arising from the business relationship, including all current account balance claims, have been settled.
- 10.2 The customer is authorized to use and resell the goods subject to retention of title insofar as this corresponds to the ordinary course of business. However, the customer may not pledge the reserved goods or assign them by way of security. The authorization to resell shall not apply if the customer excludes the assignability of the claim from the resale with his customer.
- 10.3 The customer is obliged to insure the goods subject to retention of title against the usual risks at his own expense from the transfer of risk.
- 10.4 The customer hereby assigns to Brügggen, by way of security, all claims for payment of the customer against his customers from a resale of the reserved goods as well as those claims of the customer regarding the reserved goods, which arise for any other legal reason against his customers or third parties (in particular claims from unauthorized action, claims for insurance benefits and claims from possession, in particular claims for restitution), including all balance claims from current accounts, until full payment of all current and future claims from the business relationship. This applies regardless of whether or not the reserved goods are resold without or after processing, mixing or combining. Brügggen accepts the assignment.
- 10.5 In the event that the goods are only co-owned by Brügggen or are sold by the customer together with other goods not belonging to Brügggen - irrespective of their condition - at a total price, the assignment of the purchase price claim, which is hereby already executed, is made in accordance with § 10.2 only in the amount that Brügggen has charged the customer for the part of the goods in question.
- 10.6 The retention of title also extends to the products resulting from the processing, mixing or combining of the goods of Brügggen at their full value, whereby these processes are carried out for Brügggen, so that Brügggen is considered the manufacturer. If, in the case of processing, mixing or combining with goods of third parties, their ownership rights remain, Brügggen acquires co-ownership in proportion to the objective values of these goods. If Brügggen's ownership expires due to combination or mixing, the customer hereby transfers to Brügggen the ownership or expectant rights to the new stock or item to the extent of the invoice value of the goods delivered by Brügggen. Brügggen accepts this transfer. The customer will keep the resulting sole or co-ownership of the item for Brügggen free of charge.
- 10.7 The authorization of the customer to dispose of goods subject to retention of title expires if the customer suffers or threatens to suffer financial collapse and Brügggen revokes its consent to dispose of the goods subject to retention of title or asserts its right of collection due to the behavior of the customer, in particular due to default of payment.
- 10.8 In case of seizure of the reserved goods by third parties or other interventions by third parties that jeopardize the security interests of Brügggen, the customer must point out the ownership of Brügggen and must inform Brügggen immediately in writing so that Brügggen can enforce its ownership rights. If the third party is unable to reimburse Brügggen for the judicial or extrajudicial costs incurred by Brügggen in this connection, the customer is liable for these costs.
- 10.9 In case of behavior of the customer contrary to the contract, especially in case of default of payment, Brügggen is entitled to take back the goods after setting a reasonable deadline. The customer bears the transport costs incurred for taking back the goods. The taking back of the goods by Brügggen constitutes a cancellation of the contract. It also constitutes a cancellation of the contract if Brügggen seizes the goods. Brügggen is authorized to realize the goods after taking them back. The realization proceeds are to be credited against the customer's liabilities - less reasonable realizations costs.

§ 11 Industrial property rights and copyrights

- 11.1 Brügggen is authorized to use the individual company logos, samples and graphics provided by the customer for the respective order.
- 11.2 Brügggen reserves all property rights, copyrights and other industrial property rights as well as know-how rights with regard to images, drawings, calculations and other documents and computer software provided by Brügggen.

§ 12 Secrecy

- 12.1 The customer shall keep secret all knowledge and information of a technical and commercial nature (hereinafter referred to as "secret information") received from Brügggen within the scope of the supply relationship, even beyond the duration of the supply relationship, as long as and insofar as he cannot provide proof that this secret information was already known or in the public domain at the time it was obtained by the customer or became public knowledge later through no fault of his own or was demonstrably developed completely independently by the customer or was obtained by a third party without breach of the confidentiality obligation.
- 12.2 Documents disclosed by Brügggen concerning confidential information, in particular documents exchanged in the course of the co-operation, are and remain the property of Brügggen and must be handed over at Brügggen's request, at the latest upon termination of the supply relationship. Any kind of license to confidential information requires a written agreement.
- 12.3 The customer has no right of retention with regard to confidential information or corresponding documents and materials.
- 12.4 Without the prior written consent of the customer, Brügggen will not refer to the business relationship with the customer in advertising materials, brochures, etc. and will not exhibit delivery items manufactured for the customer in its business premises or elsewhere.

§ 13 Place of jurisdiction, place of fulfilment

- 13.1 The exclusive place of jurisdiction for all present and future claims arising from the business relationship is the registered office of Brügger in 23568 Lübeck. This place of jurisdiction also applies to disputes concerning the origin and effectiveness of the contractual relationship. Brügger is at liberty to file suit at the customer's place of business.
- 13.2 The place of fulfilment is always Lübeck, unless otherwise agreed.

§ 14 Applicable law, miscellaneous

- 14.1 The contractual relationship is subject to the law of the Federal Republic of Germany to the exclusion of all references to other legal systems and international treaties. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 14.2 If parts of the above General Terms and Conditions are invalid or waived, the validity of the remaining provisions shall remain unaffected. The contracting parties are obliged to replace ineffective provisions with provisions that are legally effective and correspond to the ineffective provisions as far as possible in terms of meaning, purpose and economic result.