

General Terms and Conditions of Delivery and Sale (GTC)

Börger GmbH – Last updated in June 2020

I. Scope of Application

1. Our General Terms and Conditions of Delivery and Sale (GTC) shall apply to the delivery of products and services to businesspeople and entrepreneurs pursuant to § 14 of the German Civil Code (BGB) as well as legal entities under public law or special funds under public law.
2. The applicability of our GTC shall not be limited by conflicting or contrasting terms and conditions of the customer, unless we have expressly agreed to the applicability of such contrasting or conflicting terms and conditions. Our GTC shall also apply if we perform deliveries and services without reservation notwithstanding our knowledge about conflicting or contrasting terms and conditions of the customer.

II. Conclusion of Contract – Declarations – Rights – Prohibition of Assignment

1. Offers or cost estimates issued by us shall be non-binding. Orders placed by the customer shall constitute a binding offer which we may accept within fourteen days of receipt. In the absence of a special agreement to this end, our written confirmation of the order shall constitute a binding contract.
2. Oral commitments by our representatives or other auxiliaries shall require our written confirmation.
3. We reserve all intellectual property rights and copyrights in images, drawings, drafts, calculations and other documents. This shall likewise apply to written documents which can be classified as confidential. The customer shall require our express written permission prior to transmitting such documents to third parties.
4. Unless provided for by § 354 a of the German Commercial Code (HGB), the customer shall not be permitted to transfer contractual rights without our written permission.

III. Subject Matter of the Contract – Scope of Service – Product Quality

1. Unless expressly ordered, we shall not be required to provide upon delivery of any explicitly requested or specifically described products any plans or answers to the question on whether the customer should be able to use the products supplied by us for their processes and applications, except where material contractual circumstances have come to our attention or should have come to our attention without gross negligence.
2. Information provided by us about the subject matter of the delivery or the scope of service (e.g. weights, dimensions, functional values, resilience, tolerances and technical data) as well as the manner in which such information is provided (e.g. by means of drawings and images) shall be deemed approximate unless an exact representation is required for the purpose described in the contract.
3. Descriptions of the subject matter of the contract or the scope of delivery and service as well as definitions of characteristics and technical data shall not be interpreted as a quality guarantee.
4. Claims by the customer in relation to the quality of the products ordered shall be limited to the amount that is customary for products within the same price class as the products ordered.
5. Customary deviations and deviations due to legal regulations or constituting technical improvements, as well as the replacement of components with parts of the same value, shall be permitted as long as they do not compromise the usefulness of the product for the purpose set out in the contract.
6. The goods ordered are by default supplied without special protective equipment. The contractual partner shall be given the option to order such protective equipment separately and at their own expense.

IV. Prices

1. The prices quoted shall apply to the agreed scope of service and delivery. Separate charges shall apply to additional/special services provided.
2. All prices are quoted in EUR and must be understood as ex factory and excluding packaging, VAT as well as export duties, fees and other public charges, if any. If, where goods are delivered to other EU member states and the customer is responsible for transportation, the customer shall be required to provide all documentation required by German law (e.g. confirmation of arrival, white freight forwarding certificate or CMR way bills), duly completed and without delay. Should the customer fail to provide these documents in time, we reserve the right to send an additional invoice in the amount of the statutory German VAT rate applicable to the invoice amount. Provided that local legislation requires such evidence, the same shall apply to tax-free intra-community deliveries which are exempt from German law and to deliveries to third countries where the customer is responsible for making an export declaration.
3. Should the delivery or provision of service be delayed by more than four months from the date of conclusion of the contract and should the costs of wages, materials, packaging materials, freight, taxes or duties have risen in the meantime, we shall be entitled to adjust the agreed price in order to balance out the aforementioned cost factors. To the extent that the prices agreed are based on our list prices and the delivery or service provision are scheduled to take place later than four months from the date of conclusion of the contract, our applicable list prices at the time of delivery or service provision (less any percentage or fixed discounts) shall apply. Should the change in price be greater than 5% compared to the price agreed in the contract, the customer shall be entitled to withdraw from the contract if we insist on increasing the price despite the customer declaring their intent to withdraw from the contract.

V. Retention of Ownership

1. We reserve the right to retain the ownership of goods until such time as the customer has paid any outstanding amounts resulting from our business relationship, including any future outstanding amounts resulting from contracts concluded at the same time or at a later time. This shall also apply where individual or all outstanding amounts have been added to a customer account with a known and acknowledged balance. The customer shall be entitled to use the goods they have purchased in the ordinary course of business.
2. The retention of ownership shall also extend to the full value of products derived from processing, fusing, combining or joining goods supplied by us. However, we shall not have any responsibilities in this respect although we shall remain the manufacturer of such products. Unless the processing, fusing, combining or joining of our goods with third-party goods eradicates our right of ownership, we shall have co-ownership of the new object corresponding to the proportional value of the reserved goods in relation to the processed goods at the time of processing, fusing, combining or joining.
3. The customer agrees to assign all future claims against third parties arising from the resale of the resulting products to us as collateral with immediate effect, in full or to the extent of our co-ownership, and with all ancillary rights and priority rights. We hereby accept the assignment. The customer shall continue to be entitled to assert such claims after they have been assigned to us. Our entitlement to assert such claims ourselves shall remain unaffected. However, we agree not to assert any claims as long as the customer duly observes their payment duties and other obligations. We shall be entitled to require the customer to disclose to us all assigned claims and corresponding debtors as well as all the necessary information for asserting these claims, to hand over the corresponding documentation, and to notify the debtors of the assignment.
4. The customer shall be required to notify us without delay by registered mail of any third-party access to goods and claims

General Terms and Conditions of Delivery and Sale (GTC)

Börger GmbH – Last updated in June 2020

in our possession. The goods and the associated claims representing them shall not be pledged nor transferred or assigned to a third party as collateral before our claims have been settled in full.

the contractual agreements in the event of a non-binding performance date, the customer shall be entitled to withdraw from the contract on the basis of the unfulfilled portion of the same. The customer shall not be entitled to any further rights in this case, especially not to any claims for compensation.

VI. Terms of Payment

1. Unless otherwise stated or agreed by us, the customer shall be required to pay the full price immediately upon receipt of the goods or services without deduction of any cash discount.
2. The customer shall only have set-off rights if their counterclaims have been determined with legal effect, are undisputed or have been accepted by us.
3. The customer shall not be entitled to exercise a right of retention unless the customer's counterclaim results from the same contractual relationship and is undisputed or has been determined with legal effect.

VII. Services and Performance Period

1. In order to count as proof, fixed deadlines for deliveries or the performance of services shall require our written confirmation. Where the collaboration of the customer is required, the agreed performance period shall not commence until the customer has fulfilled this requirement. Collaboration requirements may consist in the timely provision of any documents, permits and approvals required from the customer, for instance. Adherence to the agreed terms of payment shall also be regarded as a collaboration requirement within the meaning of these GTC.
2. An agreed deadline shall be classified as having been met:
 - a) in the case of delivery without installation or assembly, when the ready-to-use consignment has been dispatched or collected within the agreed delivery or performance period. Should the delivery be delayed for any reasons which are the fault of the customer, the deadline shall be considered as having been met as long as the customer has been informed that their goods are ready for dispatch before the agreed deadline.
 - b) in the case of delivery with installation or assembly, as long as the delivery or assembly has taken place before the agreed deadline.
3. We shall be entitled to making partial deliveries if:
 - a) such partial delivery can be used by the customer within the scope of the contractually agreed intended use,
 - b) the delivery of the remainder of the goods ordered can be guaranteed, and
 - c) this does not cause the customer significant additional work or additional costs (unless the customer accepts these costs).
4. Should our sub-suppliers or subcontractors fail to deliver their products or perform their services altogether or fail to deliver them in a correct and timely manner for reasons beyond our control, or in the event of force majeure, we shall inform the customer in due time. In this case, we shall be entitled to postpone the delivery of our products or the performance of our services by the duration of the delay, or to withdraw from the contract in full or in part as a result of the unfulfilled commitment, provided we have met the requirement to inform the customer and have not assumed the procurement or manufacturing risk. Force majeure shall be defined as strike action, lockout, interventions by authorities, shortage of energy and raw materials, transport bottlenecks beyond our control, operational hindrances beyond our control (e.g. due to fire, water or machine damage) and all other hindrances whose cause cannot objectively be attributed to us.
5. Where a binding delivery or performance date or deadline has been agreed, or the agreed delivery or performance date or deadline cannot be met due to events as defined in Section 4 above, or is delayed by more than four weeks, or if the customer cannot be reasonably expected to adhere to

VIII. Debtor's Delay – Liability

1. Should our delivery be delayed, our liability to pay the customer compensation for any damage caused by the delay shall be limited to 5% of the contractual price, provided the delay can be attributed to simple negligence. Further claims by the customer shall remain unaffected.
2. Should the object to be delivered be defined exclusively by generic features, we shall only be liable to pay compensation if we fail to provide evidence that any subsequent fulfillment, delivery delay or product defect cannot be attributed to us. In addition, the provisions of No. XI of the GTC shall apply.

IX. Fulfillment – Transfer of Risk – Acceptance

1. Deliveries shall be made ex factory, which shall also constitute the place of fulfillment. Upon the customer's request and at their own expense, goods can be delivered to a different destination (purchase including shipment). Unless otherwise agreed, we shall be entitled to select the shipping option (esp. haulage company, dispatch route, packaging) at our discretion.
2. We shall insure the consignment against theft, breakage, transport, fire and water damage or any other insurable risks if expressly requested and paid for by the customer. Should the dispatch or delivery be delayed upon the customer's request, we shall be entitled to charge a warehousing fee. The warehousing fee shall be 0.5% of the invoice amount for each new month after notification of readiness for dispatch. The warehousing fee shall be limited to 5% of the invoice amount except in the proven event of gross negligence or willful intent. The customer shall be entitled to prove that no warehousing costs or lower warehousing costs were incurred.
3. The risk of accidental destruction or accidental deterioration of the goods shall be transferred to the customer no later than upon handover. In the event of a purchase including shipment, however, the risk of accidental destruction or accidental deterioration of the goods as well as the risk of delayed delivery shall be transferred to the haulage company, the freight carrier or any other person or organization entrusted with the delivery upon receipt of the goods by them.
4. Should the goods be subject to acceptance, the acceptance date shall be decisive for the risk transfer. Furthermore, the statutory provisions governing contracts for goods and services shall apply accordingly to the acceptance of goods and services. The goods shall also be deemed to have been handed over or accepted if the acceptance is delayed for reasons which are attributable to the customer.

X. Warranty – Limitation

1. The customer shall be bound by the provisions of § 377 HGB. In addition, the haulage company must be notified of any defects identified upon delivery and must document these defects. Complaints about defects must include a description of the defect in the greatest possible detail. The contractor must be notified of any warranty entitlement before any repairs are made or spare part orders are placed. No retroactive warranty claims can be filed for improper repair work already performed. Failure to file a complaint in due time shall result in any claims made by the customer becoming void.
2. We accept no liability for public statements, promotions or advertising made by other manufacturers or any third parties as they do not constitute contractually binding descriptions of the goods.
3. Claims made by the customer in respect of expenses

General Terms and Conditions of Delivery and Sale (GTC)

Börger GmbH – Last updated in June 2020

incurred for the purpose of rectification, especially transportation, travel, work and material costs, shall be excluded if these expenses are elevated because the goods delivered by us have subsequently been removed from the customer's place of business, unless such removal corresponds to their intended use.

4. Should the customer be entitled to demand rectification of a defect, they shall be entitled to refuse payment of a reasonable portion of the amount due, but no more than three times the amount required for rectifying the defect.
5. Our liability for breaches of duty due to material defects shall be excluded where defects and associated damage cannot be verifiably attributed to faulty materials, structural faults, poor execution or inadequate assembly and operating instructions. In particular, warranty claims and liability shall be excluded for damage resulting from incorrect use (especially where assembly is not performed in accordance with the state of the art or in compliance with the assembly instructions), normal wear of the goods, excessive use or unsuitable operating materials, as well as for damage as a result of physical, chemical or electrical action beyond the intended average standard action.
6. The limitation period for warranty claims shall be 12 months. This shall not apply to construction contracts, objects which are typically used in buildings and have caused structural defects, claims for damage to life, body or health, or to at least grossly negligent violations of duty by us, our legal representatives or our vicarious agents. Special statutory provisions regarding third-party claims for restitution in rem (§ 438 I No. 1 BGB), willful deceit of the vendor (§ 438 III BGB) and claims against the supplier in cases of final delivery to a consumer (§ 479 BGB) shall likewise remain unaffected.

XI. Liability for Damage

1. Our liability, for whatever legal reason, shall be unlimited in the event of:
 - a) willful intent,
 - b) culpable injury or damage to life, body or health,
 - c) fraudulent non-disclosure of defects or guarantees provided about the absence of defects,
 - d) defective deliveries to the extent to which the German product liability legislation (ProdHaftG) also provides for liability for damage to persons and property for privately used objects.
2. We shall also be liable in the event of culpable violations of essential contractual obligations. However, in cases of simple negligence our liability shall be limited to the damage we foresaw as a potential consequence of a violation of the contract upon its conclusion, or which we should have foreseen by applying due care and attention and which are typically to be expected during the intended use of the deliverable. Material contractual obligations shall be defined as obligations protecting essential contractual legal positions of the customer to which the latter is entitled based on the content and purpose of the contract, as well as such obligations which can only be fulfilled by the due execution of the contract and upon whose observance the customer has regularly relied and may rely.
3. We shall likewise be liable for damage caused by gross negligence. In the event of violations of non-essential contractual obligations affecting legal interests other than life, body or health, our liability in cases of gross negligence shall likewise be limited to the damage we foresaw as a potential consequence of a violation of the contract upon its conclusion, or which we should have foreseen by applying due care and attention and which are typically to be expected during the intended use of the deliverable.
4. Any further claims shall be excluded.
5. The disclaimers and limitations of liability listed in paragraphs 1 to 4 shall also apply to similar violations of obligations by our vicarious agents.

6. To the extent that our liability for compensation claims is excluded or limited, this shall also apply to the personal liability of our bodies, legal representatives, members of staff and other vicarious agents.

XII. Choice of Law – Place of Jurisdiction

1. These GTC shall be subject to the laws of the Federal Republic of Germany, excluding German conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The exclusive place of jurisdiction shall be the court responsible for the company's registered office in Borken-Weseke.

XIII. Export Control

1. The customer undertakes to strictly refrain from conducting the following types of business:
 - a) business with persons, organizations or institutions which appear on a list of sanctions pursuant to EC directives or US export regulations or contradict any other legal regulations,
 - b) business with blacklisted embargo states,
 - c) business requiring authorization but for which no authorization has been granted,
 - d) business related to NBC weapons or military end purposes.
2. The customer shall immediately and proactively notify us in writing if they become aware of any violation of the aforementioned obligations or have reasons to suspect such violations.
3. Should the customer violate any of the above-mentioned obligations, we shall be entitled to withdraw from the contract. The assertion of any further claims, in particular claims for compensation, shall remain unaffected.
4. The customer will provide us with any information necessary for the export license for the approval process at the Federal Office of Economics and Export Control (BAFA) upon request.