

General conditions of purchase (GCPs)

Börger GmbH - last updated: November 2020

Valid from 07 December 2020

I. Orders and their acceptance

1. Orders and agreements are binding only when they are placed or confirmed in writing by BÖRGER GmbH, subsequently referred to as BÖRGER. The acceptance of orders must be confirmed to BÖRGER in writing immediately after their receipt.
2. Implementation of an order placed by BÖRGER is deemed to be a recognition of the BÖRGER conditions. If, under exceptional circumstances, the prices are not agreed in advance, then they must be bindingly stated in the order confirmation. BÖRGER's right of objection and withdrawal remains unaffected.
3. These GCPs apply exclusively. The General Terms and Conditions of the supplier (subsequently referred to as LX) which deviate from, contradict, or supplement BÖRGER's GCPs become a component of the contract only if, and to the extent that, BÖRGER has expressly agreed in writing to their validity. This requirement for agreement applies in every case, e.g. even if BÖRGER, in the knowledge of the vendor's General Terms and Conditions, accepts the vendor's deliveries without reserve.

II. Prices

1. The agreed prices are fixed prices, and are stated - exclusive of the applicable value added tax - with free delivery to the point of use, and inclusive of packing and freight costs. The agreement on the place of execution is unaffected by the type of pricing.
2. The price indicated in the order is binding. If prices fall between ordering and delivery, then the prices quoted at the time of delivery apply. Price reservations on the part of the contractor trigger a reservation of acceptance on the part of BÖRGER. If non-bindingly agreed prices are increased, then BÖRGER has the option to agree to these or to terminate the contract.
3. BÖRGER reserves the right to accept over-deliveries.

III. Trading terms

The INCOTERMS in the version valid at the conclusion of a contract apply to the interpretation of trading terms.

IV. Environmental, safety, and other provisions

For the delivery item, the LX is obliged to take all necessary measures of environmental and accident prevention, and to take into account all other official and legal requirements. If the delivery item is intended for a point of use abroad, and this is known to the LX, then the environmental and health and safety provisions which apply there must also be complied with. At the expense of the LX, BÖRGER has the right to demand a certificate from the responsible trade association; this certificate must indicate that all relevant provisions for accident prevention have been complied with.

V. Delivery item

1. The delivery item must fulfill the intended purpose and the latest state of the art. If, in an individual case, the LX wishes to deviate from the contractually agreed delivery because this is reasonable or necessary, then he must obtain BÖRGER's written agreement in advance. The obligation of the LX to deliver a product free of defects remains unaffected by BÖRGER's agreement.
2. The fundamental safety and health requirements for the design and construction of units as per the specific Safety and Machinery Directives must be complied with.
3. All documentation, statements, tests, and identifications required by these directives also form part of the scope of delivery. In addition, when supplying units, the LX must at the same time supply a manufacturer's declaration and, for safety components placed independently on the market, a declaration of conformity as per EC directive 2006/42/EC.

4. The following applies to the delivery of assemblies, machinery components, and complete aggregates:
 - a. The LX bears full responsibility for the process-related design of the delivery item. All data and information required for the design are made available by BÖRGER to the LX upon request.
 - b. Components not manufactured by the LX himself are permitted only in accordance with the component description which applies to the respective order. Deviations are permitted only with BÖRGER's written approval.
 - c. Unless expressly otherwise agreed, the delivery item will be painted as per BÖRGER's requirements in the colors specified for the order.
 - d. During commissioning, an acceptance protocol will be created for the delivery item. The limitation period for claims for defects starts from signature of the protocol by BÖRGER or by the end user.
5. The LX is unconditionally responsible for procurement of the goods and of the supplies and services required for them – even in the absence of fault – (complete acceptance of the risk of procurement), unless something different is agreed on a case-by-case basis (e.g. limitation to stock).

VI. Delivery deadlines and lateness

1. Part deliveries and/or deliveries before the agreed deadline require BÖRGER's advance agreement. Additional costs, such as shipping, storage, etc., caused by advance or partial delivery must be borne by the LX, unless these deliveries have been expressly requested by BÖRGER and unless BÖRGER has expressly stated that it is prepared to accept these costs.
2. The agreed delivery deadlines are binding and must be complied with under all circumstances. If a specific calendar week is agreed as a delivery deadline, then the goods must be delivered no later than Friday 13.00.
3. If the LX realizes that compliance with a delivery deadline is at risk, then he must inform BÖRGER immediately, in order to make other arrangements possible.
4. BÖRGER has recourse to the statutory claims in the event of lateness. If a contractual penalty was agreed, this does not restrict the assertion of further damages.
5. If the LX is late with a delivery, then (in addition to further legal claims) for the damages BÖRGER suffers from the delay, for each working day of lateness BÖRGER can demand once-off compensation of 0.1 % of the agreed net order amount, but to an overall sum no greater than 5% of the net order amount. BÖRGER has the right to prove that greater damages than this occurred. The LX has the right to prove that no damage, or a significantly lower level, occurred.
6. If BÖRGER accepts a late performance, then in deviation from § 341 paragraph 3 BGB [German Civil Code] BÖRGER will claim an agreed contractual penalty no later than the final payment.
7. The statutory regulations apply to the event of a delay in acceptance by BÖRGER. However, the LX must also expressly offer us his performance, even if a specific or determinable calendar time is agreed for an activity or cooperation by BÖRGER (e.g. provision of material). If acceptance by BÖRGER is delayed, then the LX may demand compensation of his additional expenses as per the statutory regulations (§ 304 BGB). If the contract applies to a unique item (once-off manufacture) to be manufactured by the LX, then the latter has further rights only if BÖRGER has undertaken to collaborate and is responsible for the failure to collaborate.

VII. Dispatch

1. The LX must bear the wage and material costs of shipping and of the shipping documents, and also for the customary packaging, unless otherwise agreed in the individual contract or through the agreement of the INCOTERMS.
2. The specified weights of all deliveries must be stated in the documents accompanying the goods. Suitable storage and insurance must be provided for call-off deliveries or for interim storage at BÖRGER's request.
3. The invoice, delivery note, and dispatch note must be sent to BÖRGER with correct format and content.
4. Separate from the delivery of the actual delivery item, the LX is obliged to send, in appropriate quantity and format, a complete set of documentation as per EN ISO 12100 to the respective purchasing representative.
5. The LX is liable for the consequences of an incorrect consignment note declaration. A dispatch note must be submitted immediately upon dispatch of every single delivery. If the designated receiving point, department, order number, subject comment, or issue comment are missing from the shipping documents, then all resulting costs are borne by the LX.
6. If an "ex works" or "ex stock" price is agreed, then BÖRGER will accept only market-appropriate freight costs as per the BÖRGER procurement logistics. All costs up to handover arising to the freight carrier, including loading but excluding carriage, are borne by the LX.

VIII. Defective delivery and limitation period

1. Unless otherwise agreed subsequently, the statutory regulations apply to BÖRGER's rights in the event of material defects and defects in title of the goods (including incorrect and short delivery, as well as incorrect installation, and defective installation or operating instructions) and to other breaches of duty by the LX.
2. As per the statutory regulations, the LX is specifically responsible for the goods having the agreed characteristics when risk transfers to BÖRGER. For even insignificant deviation from the agreed characteristics or even insignificant impairment of usability, BÖRGER has the right to withdraw from the contract and to claim compensation for damages instead of the (full) performance.
3. In deviation from § 442 paragraph 1 p. 2 BGB, BÖRGER also has the unrestricted right to claims for defects if, as a result of gross negligence the defect remained unknown to BÖRGER at the conclusion of the contract.
4. The statutory regulations (§§ 377, 381 HGB [German Commercial Code]) apply to the commercial obligation to examine and to notify defects, with the following provision: BÖRGER's obligation to examine is restricted to defects which are clearly evident during its inspection of incoming goods through external inspection, including the delivery documents (e.g. transport damage, incorrect and short delivery) or which are recognizable through BÖRGER's random sampling procedures during quality control. If an acceptance is agreed, there is no obligation to examine. Otherwise, it depends on the extent to which an examination is feasible, taking into account the normal course of business in the individual case. BÖRGER's obligation to notify defects which are discovered later remains unaffected. Regardless of BÖRGER's obligation to examine, a complaint (notification of defect) is in any case deemed to be immediate and in good time if it is transmitted by BÖRGER within five working days from discovery, or in the case of evident defects, within five working days from the acceptance of goods by the Incoming Goods department. If defects are found only after the subsequent, more intensive, investigation (e.g. lab tests for chemical composition, complicated measurement, or evaluation), then it is also deemed to be in good time if these defects are notified by BÖRGER within two weeks from the acceptance of goods by the Incoming Goods department.
5. The LX will bear the expenses required for the purpose of testing and rectification, even if it becomes apparent that no defect was in fact present. BÖRGER's liability to pay compensation for an unjustified demand for correction of defects remains unaffected. However, BÖRGER is liable only if it has recognized or grossly negligently has failed to recognize that no defect exists.

6. Regardless of the legal rights and regulations in paragraph 5, the following applies: If the LX does not fulfill his obligation to rectification – by correction of the defect (reworking) or by delivery of defect-free material (replacement delivery) at BÖRGER's choice – within an appropriate period set by BÖRGER, then BÖRGER can itself correct the defect and claim compensation from the LX for the expenses necessary for this, or it may claim a corresponding advance payment. If rectification by the LX is unsuccessful or such a proposal is unacceptable to BÖRGER (e.g. because of particular urgency, risk to operations, or imminent occurrence of disproportionate damage), then no period for remediation is required. BÖRGER will inform the LX of such circumstances immediately, or in advance if possible. If rectification is to be performed, then the rectification is deemed to have failed after the first unsuccessful rectification attempt.
7. In addition, for a material defect or defect in title as per the statutory regulations – i.e. in the event of even insignificant deviation from the agreed characteristics or even insignificant impairment of usability – BÖRGER has the right to reduce the purchase price or to withdraw from the contract. In addition, BÖRGER has a claim to compensation for damages and expenses, as per the statutory regulations.
8. In deviation from § 438 paragraph 1 item 3 BGB, the general limitation period for claims for defects is 3 years. If an acceptance is agreed, then the limitation period starts from the acceptance. The 3-year limitation period also applies correspondingly to claims arising from defects in title, but the legal limitation period for third party claims for restitution (§ 438 paragraph 1 item 1 BGB) remains unaffected. Furthermore, for as long as the third party can still assert the right – particularly in the absence of limitation – against BÖRGER, claims arising from defects in title under no circumstances expire.
9. With regard to a defect resulting in rectification, the limitation period restarts from the conclusion of the rectification measure. Equally, longer legal limitation periods remain unaffected, as do further provisions relating to expiry suspension, suspension, and the restart of periods.

IX. Property rights of third parties

The LX bears the responsibility that delivery and use of the delivery item do not breach property rights of third parties, especially patents, registered designs, copyright and competition rights, and the LX will indemnify BÖRGER for all claims asserted by third parties.

X. Retention of Ownership

1. Transfer of ownership in the goods to BÖRGER must take place unconditionally and without regard to payment of the price. However, if in an individual case BÖRGER accepts a proposal from the LX whose transfer of ownership is conditional upon the payment of the purchase price, then the LX's retention of ownership lapses at the latest upon the payment of the purchase price for the delivered goods. In the normal course of business, BÖRGER remains entitled to resell the goods even before payment of the purchase price, subject to advance assignment of the claim arising from this (alternatively validity of the simple retention of ownership which is extended to the resale). This in any case excludes all other forms of retention of ownership, in particular retention of ownership which is extended to further processing, extended in another way, or transferred.
2. Drawings and other documentation, devices, models, tools, other means of production and provided items entrusted to the LX remain the property of BÖRGER. Ownership of tools and other means of production paid for by BÖRGER transfers to BÖRGER. Without the written agreement of BÖRGER, the above-mentioned items must neither be scrapped nor made accessible to third parties, e.g. for the purpose of manufacturing. They must not be used for any other purpose than those which were contractually agreed, e.g. for delivery to third parties. The LX must store them carefully at his own expense for BÖRGER during the performance of the contract.
3. Unless contractually agreed otherwise, it is the duty of the LX to care for, maintain, and service the above-mentioned items.
4. BÖRGER reserves all rights in drawings or products created to the instructions of BÖRGER, and also in processes developed by BÖRGER.

XI. Assignment, offsetting, and right of retention

1. Assignment of claims against BÖRGER is permitted only if BÖRGER has given advance written agreement. This also applies to silent assignments.
2. The LX is not authorized to offset asserted claims against BÖRGER without BÖRGER's advance agreement, unless the claim is undisputed or has been determined to have legal effect.
3. Rights of retention by the LX are excluded unless they are based on the same contractual relationship.

XII. Place of execution, place of jurisdiction, applicable law

1. The place of execution for a delivery is the receiving point specified by BÖRGER.
2. The place of execution for payment is Borken. The exclusive place of jurisdiction for deliveries and payments is Borken. The substantive and procedural law of the Federal Republic of Germany applies exclusively and unrestrictedly, to the exclusion of the United Nations Agreement dated 11 April 1980 on contracts for the international sale of goods.

XIII. Payment

1. Payments are made weekly on the basis of the agreed discount terms.
2. The payment period starts from the day that the invoice in its correct form is received by BÖRGER - as long as the goods and correct documentation have been provided; in the event of early delivery, the period starts from the requested delivery time/date.
3. Invoices must be submitted in written form by e-mail. Under no circumstances may invoices be attached to the goods.

XIV. Miscellaneous

1. If an application is made to open insolvency proceedings over the LX's assets, then BÖRGER has the right to retain 10 % of the ordered value as security, until the limitation period for claims for defects has expired. BÖRGER additionally has the right to withdraw from the contract for the part of the order which is still unfulfilled.
2. The LX is obliged to maintain strict confidentiality about all operational matters which have become known to him as part of the contract initiation and processing, and about other information received from BÖRGER, and to make this available to third parties only with BÖRGER's agreement.
3. Data protection:
 - a. The LX agrees that BÖRGER may use EDP to store the supplier's data required in the course of the business relationship and of the contracts concluded with him, and that BÖRGER may use it solely for its own purposes within its associated companies.
 - b. The legal and operational data protection provisions must be complied with. If personal data is processed or used on behalf of BÖRGER, then the parties must immediately conclude a data protection agreement as per the provisions of the General Data Protection Regulation (GDPR).
4. The LX undertakes to obey the compliance regulations and guidelines; these may be viewed on BÖRGER's website.