

# Terms and Conditions of Delivery (T&C Delivery) of BBW Lasertechnik GmbH

## 1. Scope

- a) All our deliveries and services (including the corresponding offers) are based on these Terms and Conditions of Delivery ("T&C Delivery"). Amendments as well as deviating terms and conditions of the customer will only become part of the contract if we expressly agree to them; the same applies to any exclusion of these T&C Delivery.
- b) The T&C Delivery apply to all future deliveries, services and offers even if they have not been agreed again separately.
- c) The T&C Delivery apply exclusively to customers who are entrepreneurs within the meaning of section 14 German Civil Code (*BGB*), a legal entity under public law or a special fund under public law (section 310 German Civil Code (*BGB*)).
- d) Even if these T&C Delivery are provided in English, only the German version is authoritative.

## 2. Offers and conclusion of contract, reservation of rights, confidentiality

- a) Our offers are subject to change, unless otherwise stated in the offer.
- b) Where offers are prepared or a contract is concluded on the basis of documents or sketches/drawings of the customer, the customer is responsible for ensuring that the documents or sketches/drawings provided are correct. We do not have to check these.
- c) The customer's order is a binding offer which we can accept within 14 days from the date of the order. Acceptance will normally be effected by way of an order confirmation. Performance within the acceptance period will also be deemed to be acceptance of the offer.
- d) The illustrations, descriptions, calculations, drawings, brochures, data sheets, test certificates or similar documents attached to our offers or on which our offers are based are non-binding information which does not become part of the contract. We reserve all property rights, copyrights and other rights in the information provided by us which is not publicly available. In the absence of a written agreement to the contrary, such information may not be passed on to third parties and may only be used in the business relationship with us.

## 3. Prices and terms of payment

- a) Unless specific prices have been expressly agreed, the prices on the day when the service is provided or delivery is made apply.
- b) All prices stated are net prices and the value added tax at the respective statutory rate as well as costs of packaging and transport are due on top.
- c) The minimum order value is EUR 100.00 net. If the minimum order value is not reached, a minimum quantity surcharge equivalent to the difference between the actual order value and the minimum order value will be charged.
- d) We reserve the right, in the case of contracts with an agreed delivery period of more than four months, to increase or reduce agreed prices in accordance with any changes in costs which have occurred, in particular in the case of changes in the costs of materials and wages as well as changes with regard to other ancillary costs. If the increase amounts to more than 5 % of the agreed price, the customer will have the right to cancel the contract (termination or rescission).
- e) Unless otherwise stated in our order confirmation, in an agreement or on our invoice, the prices are due for payment without deductions within 14 days of the invoice date.
- f) We have a right to require advance payment for any outstanding deliveries or services if, after conclusion of the contract, we become aware of circumstances which could substantially reduce the creditworthiness of the customer and which would put payment by the customer of our outstanding receivables at risk.

## 4. Packaging

Deliveries will be packaged in the customary manner. Unless otherwise agreed, the costs of packaging will be borne by the customer. At the customer's request, we will take back packaging; the customer will also bear the costs of packaging in such cases.

## 5. Delivery, delivery period and deadline, partial delivery, passage of risk, default

- a) Delivery periods or delivery deadlines stated by us are non-binding, unless a specific delivery period or delivery deadline is expressly designated as binding or expressly agreed as binding. The delivery period or deadline will not commence until all technical questions have been clarified and the obligations have been properly met in due time, in particular any cooperation obligations on the part of the customer.
- b) We have a right to provide contractual performance in partial deliveries provided the customer can be reasonably expected to accept such.
- c) If delivery on call has been agreed, the customer will call off quantities within a reasonable period of time. Excess or short quantities in a range of +/- 15 % delivered must be accepted by the customer.
- d) If the delivery becomes impossible or excessively difficult due to circumstances for which we are not responsible and/or due to force majeure, official measures, a plant shutdown, strike or similar circumstances – also at our own suppliers – we will be released from the delivery obligation for the duration of the hindrance and its after-effects. If the resulting delays exceed a period of six weeks, both parties will have a right to rescind the contract with regard to the affected scope of performance. In the event of non-delivery or insufficient delivery by our suppliers, we will be released from our delivery obligations in whole or in part. This only applies if we have made the arrangements customary in the industry for the purpose of procuring the goods to be delivered by us. In this case, we undertake to assign our claims against the supplier to the customer at the customer's request. There are no further claims.
- e) The risk of accidental loss and accidental deterioration of the delivery item will pass to the customer when the delivery item is handed over to the customer at the latest. In the case of sales including shipment, the risk of accidental loss and accidental deterioration of the delivery item will pass to the customer when the goods are handed over to the freight carrier or the other person commissioned with shipping. Insofar as we also provide assembly as an ancillary service in exceptional cases, the risk of accidental loss and accidental deterioration of the delivery item as well as the risk of delay will pass to the customer in the same way. Only insofar as acceptance is to take place in the case of contracts for work and services will the risk pass at the time of acceptance.
- f) If the customer falls into default with acceptance or culpably breaches other duties of cooperation, we will have a right to demand reimbursement of the loss incurred, including any additional costs (especially warehousing costs). Further-reaching claims are reserved. Furthermore, in this case, the risk of accidental loss or accidental deterioration of the delivery will pass to the customer, in deviation from e), at the time when the customer is in default of acceptance.
- g) We only take out transport insurance if the customer expressly asks us to do so. The customer must bear the costs of this.

- h) In the absence of a written agreement to the contrary, the terms of delivery are ex works Prutting/EXW Prutting (INCOTERMS 2020).

## 6. Liability for defects, warranty

- a) Delivery items will only be deemed to be defective if they are not of the quality as expressly agreed (in the form of agreed specifications, drawings, approved initial samples, etc.) and – unless certain characteristics have been agreed – do not correspond to the acknowledged state of practice.
- b) The warranty period is one year from handover or delivery, unless a longer warranty period is agreed in individual cases.
- c) The customer's rights in respect of defects presuppose that the customer has complied with its obligations to inspect and give notice of defects pursuant to section 377 German Commercial Code (*HGB*).
- d) If the delivered items have a defect, we will have a duty and a right to choose, within a reasonable period, whether to provide repair or replacement delivery. If a repair fails, i.e. owing to impossibility, unreasonableness, refusal or unreasonable delay of repair or replacement delivery, the customer can rescind the contract or reduce the purchase price by a reasonable amount.
- e) If a defect is the result of fault on our part, the customer can claim compensation subject to the preconditions stipulated under section 7.
- f) Technical modifications and further developments of the delivery item do not constitute a defect in performance, unless these modifications or further developments are substantial or the customer cannot be expected to accept them. The same applies if the contractually agreed performance is achieved by a deviating number of delivery items, this modification is not substantial and the customer can be reasonably expected to accept delivery of the modified number of individual delivery items.
- g) In the case of defects in product parts or components supplied by other manufacturers which we cannot remedy on grounds of licensing regulations or for reasons of fact, we will, at our discretion, assert our warranty claims against the manufacturers and suppliers on behalf of the customer or assign them to the customer. There will only be warranty claims against us for such defects, subject to the other preconditions and in accordance with these T&C Delivery, if bringing a claim in court against the manufacturers and suppliers for the aforementioned claims was not successful or has no prospects of success, e.g. due to insolvency. The statute of limitations for those warranty claims of the customer concerned will be suspended for the duration of the legal dispute.
- h) Warranty claims do not apply if the customer modifies the delivery item without our consent or has it modified by third parties and, as a result, it is impossible or has been rendered unreasonably more difficult to remedy the defect. The customer must bear any additional costs of remedying the defect which result from the modification as a matter of principle.
- i) Warranty claims are excluded:
  - with regard to the deterioration of such items which are subject to natural wear and tear, unless the deterioration has been caused by something other than wear and tear;
  - if operating and maintenance instructions are not followed, or
  - if persons carry out repairs to and interfere with the item who do not have the necessary expertise to do so.
- j) If in the individual case used items are delivered on the basis of an agreement with the customer, any warranty is excluded.
- k) The provisions of this section 6. apply accordingly with regard to defects of title including violation of third party intellectual or industrial property rights.

## 7. Liability for compensation on grounds of fault

- a) Our liability for compensation, regardless of the legal basis and in particular on grounds of impossibility, default or a defective or incorrect delivery item, breach of contract, breach of duties in contractual negotiations and tort, is limited, where fault is relevant, in accordance with this section 7.
- b) We will be liable for intention and gross negligence by our management bodies, statutory representatives and employees.
- c) In the event of simple / normal negligence our liability will be limited to the damage which we foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which we should have foreseen, taking account of the circumstances which were known to us or which would have been known to us had we exercised the customary due care. Furthermore, compensation can only be claimed for indirect damage and consequential damage resulting from defects in the delivery item if such damage can be typically expected when the delivery item is used for its intended purpose.
- d) In the event of liability for simple / normal negligence, our liability to pay compensation per year will be limited to a total amount of 50 % of the turnover of the current or preceding calendar year between us and the respective customer (whichever is the higher), even if it concerns a breach of material contractual duties. This limitation of liability does not apply in the event of a statutory duty to pay compensation for personal injury.
- e) The aforementioned exclusions and limitations of liability apply to the same extent for the benefit of our management bodies, statutory representatives, employees and other vicarious agents.
- f) Where we provide technical information or advice and this information or advice is not part of the agreed scope of performance we owe and has been agreed under the contract, this is provided free of charge and excluding any liability.
- g) The limitations in this section 7. do not apply to our liability for intent, gross negligence, guaranteed characteristics of quality, injury to life, limb or health or under the German Product Liability Act (*ProdHaftG*).

## 8. Reservation of title

- a) We reserve title in the goods or delivery items until receipt of all payments under the delivery contract (reserved goods). In the event of conduct by the customer in breach of contract, in particular in the event of default with payment, we will be entitled to take back the reserved goods. The taking back by us does not constitute rescission of the contract, unless we have expressly declared this in writing. Seizure of the goods by us will always constitute rescission of the contract. After taking back the goods subject to reservation of title, we will be entitled to realise them; the realisation proceeds will be set off against the customer's liabilities – less reasonable costs of realisation.
- b) The customer must treat the reserved goods with care and must, in particular, sufficiently insure these at their as new value at its own cost against fire, water and theft.

## 9. Contracts on continuing obligations

- a) Unless otherwise agreed in writing, even in the case of contracts on continuing performance obligations, a delivery obligation will only arise in each case following written/electronic order confirmation by us.

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- b) Furthermore, a delivery obligation always presupposes that the quantities requested by the customer are within the agreed – and in the absence of agreed, the actual – weekly and/or monthly capacities and that required lead times (period between receipt of order/delivery schedule/call-off and requested delivery date) are observed.
  - c) Pricing is based on the economic framework conditions at the time we submit our offer. In the event of any substantial changes (change greater than 5 (five) %) in the costs of materials, labour, energy and inflation, prices will be adjusted accordingly.
  - d) If ratios/price reductions are agreed within the framework of continuing obligations, it is a pre-requisite for their implementation that the number of units p.a. forecast by the customer before the order has been placed is not undercut by more than 5 (five) %.
  - e) If the quantities forecast by the customer before the order has been placed fall short by more than 5 (five) %, the agreed prices will be reasonably adjusted.
  - f) In the event of a project stop or of project termination, the costs not amortised up to the date of termination, in particular investments and development costs, costs for reserved production capacities that cannot be used for other purposes, for obsolete input material as well as the termination costs justifiably claimed by our suppliers will be determined and reimbursed by the customer in return for proof.
- 10. Ownership of equipment**  
If costs for devices, tools, machine components or other components are offered by us (e.g. for process enablement), then these items will become or remain our sole property in the absence of an express separate written agreement, even if these costs are reimbursed or paid (in whole or in part) by the customer.
- 11. Provision of items**  
If items are provided to us, in the absence of an express separate written agreement, we will only be liable without limitation in the event of damage demonstrably caused by us in the case of intent and gross negligence and otherwise only up to an amount corresponding to the remuneration which we received or would have received for the processing of the item provided.
- 12. Data protection and data security**
- a) The parties have a duty to observe the statutory provisions on data protection, in particular the EU General Data Protection Regulation ("GDPR"), and to impose compliance with these provisions on their employees as well.
  - b) The parties will process the personal data received exclusively for the purpose of performance of the respective contract and will protect such data by means of technical and organisational security measures adapted to the current state of the art of technology. The parties undertake to delete the personal data as soon as processing such data is no longer necessary. Further statutory retention rights remain unaffected.
  - c) The parties will maintain appropriate state-of-the-art technical and organisational safeguards with respect to the security of the information that is transmitted between them.
- 13. Place of performance, place of jurisdiction, applicable law, severability clause**
- a) The place of performance for both parties is our registered office in Prutting. The exclusive place of jurisdiction for all disputes arising from the contractual relationship is Rosenheim provided the customer is a merchant.
  - b) The contracts concluded between us and the customer are subject to the law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
  - c) Should individual provisions of these T&C Delivery be or become invalid in their entirety or in part, this will not affect the validity of the remaining provisions of these T&C Delivery. The parties will replace the invalid provision with a valid or enforceable provision which reflects, as closely as possible, the economic purpose of the original provision. This applies accordingly to any lacuna.

- Version of: August 2023 -