
Barentz GmbH
General Terms and Conditions
of Sale and Delivery for Companies (Customers)
within the meaning of § 14 BGB [German Civil Code]

1. Scope

- 1.1 These General Terms and Conditions of Sale and Delivery shall apply only to our relations with companies (customers) within the meaning of § 14 of the Civil Code of the Federal Republic of Germany (BGB).
- 1.2 Where our General Terms and Conditions of Sale and Delivery are implemented in a business transaction with a customer, they shall also apply to all further business transactions between the customer and ourselves unless otherwise agreed in writing.
- 1.3 Our General Terms and Conditions of Sale and Delivery apply exclusively to our business relations with our customers. We do not acknowledge any contrary or terms and conditions of the customer that are different to our General Terms and Conditions of Sale and Delivery unless we had expressly agreed otherwise in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

2. Samples

The customer shall indemnify us at first request against any claims by third parties who assert these against us based on drawings, models or samples or other manufacturing data and information subject to property rights which the customer has made available to us. The customer alone shall be responsible, with respect to drawings, models or samples or other manufacturing data and information subject to property rights, for checking whether third-party property rights exist and/or shall be obliged to obtain any permit to use the required property rights from the owner before placing an order with us.

3. Properties of the goods

- 3.1 Reference to standards, similar technical regulations and technical information, descriptions and illustrations of a delivery item in quotations and brochures and our advertising shall only be an indication of a property of our goods when we have expressly declared the condition to be a "property of the goods"; these are otherwise non-binding general descriptions of performance.
- 3.2 We shall only be deemed to have given a warranty if we have indicated a property as warranted in writing.
- 3.3 We are not obliged to check ourselves whether the manufactured goods can be used for the customer's intended purposes.

4. Conclusion of a contract, scope of delivery, acceptance

- 4.1 Our quotations are subject to change and not binding unless we have designated them as binding. They are merely requests to customers to place a binding order on this basis. A contract is created - also in day-to-day business - only when we confirm the customer's order in writing (also by telefax or email) or deliver the goods. Our order confirmation shall prevail over the content of the supply contract. Where delivery is made immediately, our order confirmation can be replaced by the invoice.
- 4.2 All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to cancellation of the written form requirement. Verbal collateral agreements shall be void.

- 4.3. Assumption of a procurement risk does not lie solely in our obligation to deliver an object which is only defined by its type.
- 4.4. The customer must advise us in writing in due time prior to conclusion of the contract of any special requirements of our goods as well as the required total delivery quantity and the anticipated volume of single calls.
- 4.5. If acceptance or shipment of the goods is delayed for a reason for which the customer is responsible, the customer fails to provide a shipping order by the end of the delivery period, or the customer negligently fails to fulfil its contractual obligation to call up orders, we shall be authorised, after setting an extension of time of 7 days which has expired, at our option to request immediate payment of the purchase price or to rescind the contract or refuse performance and request damages instead of full payment. The time limit must be given in writing but we shall not be required to refer again to our rights under this clause. In the event of our claiming payment of damages, this shall amount to at least 10% of the net delivery price. This shall not affect any right to prove a different amount of damages or that damages are not incurred.
- 4.6. We are entitled to make excess or short deliveries in terms of weight of up 5 % compared with the order volume or single call.

5. Delivery, delivery period, default in delivery

- 5.1 Binding delivery quantities, dates and time limits must be agreed expressly and in writing as binding. We shall make every endeavour to meet delivery quantities, dates and time limits that are not binding or approximate (approx., about etc.). Unilateral specifications by the customer shall not be binding for us unless we have expressly agreed to them in writing.

A commercial transaction for delivery by a fixed date shall only exist if we have expressly confirmed such transaction in writing or the legal requirements for a commercial transaction for delivery by a fixed date exist. The unilateral designation of a delivery as a commercial transaction for delivery by a fixed date by the customer only shall not be sufficient.

- 5.2 Delivery time limits begin with the customer's receipt of our order confirmation but not before all details about the execution of the order are clarified and all other requirements to be fulfilled by the customer are met. This shall also apply to delivery dates. If the customer requests modifications after placing the order, a new delivery period shall begin when we confirm the modification.
- 5.3 If we default in delivery, the customer must first set us a reasonable extension of time to perform the contract. If this elapses without result, the customer can assert the rights stipulated in §§ 280, 281, 284, 286, 323 BGB on the respective conditions stated therein. Damage claims for breach of duty - for whatever reason - shall only exist as stipulated in paragraph 11. If we fail to perform on the date or within a period determined in the contract, the customer can only rescind the contract if it has bound its interest in the performance to the timeliness of performance.
- 5.4 Damage claims by the customer for default in delivery shall be limited to a maximum of 0.5% of the net delivery price of the delayed goods per full week of default but in all to a maximum of 5% of the specified net delivery price. If default is due to intent or gross negligence or a material breach of duty, statutory liability shall apply, which is limited, however, in the event of a merely negligent breach of duty to the typical and foreseeable damage in each case.
- 5.5 If the customer sets us a reasonable period of grace when default in delivery has occurred, the customer shall be authorised, after expiry of this period of grace without result, to rescind the contract. The customer shall only be entitled to damage claims for non-performance in the amount of the foreseeable damage, if the default was due to intent or

gross negligence or a material breach of duty. Furthermore, liability for damages is limited to 50% of the damage incurred.

5.6 The limitations of liability in 5.4 and 5.5 shall not apply if a commercial transaction was concluded for delivery by a fixed date. This shall also apply if the customer can assert that, due to the default for which we are responsible, the immediate assertion of its claim for damages can be taken into account instead of performance.

5.7 We shall not be in default as long as the customer is in default in fulfilling its obligations towards us; this shall also include obligations under other contracts.

6. Reservation of own delivery, force majeure and other obstructions

6.1 If, despite proper stocking, we do not receive a delivery or service from our sub-contractors for reasons for which we are not responsible, or it is incorrect or not in due time, or cases of force majeure occur, we shall notify our customer in writing in due time. In such case, we are authorised to postpone the delivery for the duration of the obstruction, or to withdraw in whole or in part from that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not accepted a procurement risk. Cases of force majeure are strikes, lock-outs, official intervention, power shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions not due to us e.g. fire, water and damage to machinery and any other obstructions that considered objectively were not caused by our negligence.

6.2 If a delivery date or delivery period is agreed with binding force and the agreed delivery date or the agreed delivery period is exceeded due to events in 6.1., the customer shall be authorised after a reasonable extension of time has elapsed without result to rescind that part of the contract not yet fulfilled, if the customer cannot be objectively expected to adhere further to the contract. The customer shall have no further claims, especially damage claims, in this case.

7. Shipment and passing of risk, insurance, packaging

7.1 Unless we have agreed the INCOTERM DDP (Delivery Duty Paid) with the customer in writing, we shall ship goods ex our works, uninsured, at the risk and expense of the customer.

7.2 We reserve the right to choose the route and means of transport. However, we shall endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses incurred as a result - also where delivery freight paid is agreed - shall be borne by the customer. If shipment is delayed at the customer's request or through the customer's fault, we shall store the goods at the customer's expense and risk. In this case, notice that the goods are ready for shipment shall be deemed equivalent to shipment.

7.3 The risk of accidental loss or accidental deterioration shall pass to the customer when the goods to be delivered are handed over to the customer, forwarder, carrier or companies otherwise instructed to carry out shipment but at the latest when the goods leave our works, warehouse or branch unless otherwise agreed in writing with the customer.

7.4 If a consignment is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date the goods are notified as ready for delivery.

8. Notice of defects, warranty, breach of duty

8.1 The customer must give us notice of any recognisable defects immediately but at the latest 10 days after performance, also with respect to any part of the performance which the customer can use. Notice of defects must include a detailed description of the defect.

Failure to give notice of defects in due time shall exclude any claim by the customer for breach of duty due to poor performance.

- 8.2 Notice of hidden defects must be given in writing immediately after they are recognised but at the latest within the limitation period specified in 8.10. Notices of defects must here too include a detailed description of the defect. Failure to give notice of defects in due time shall exclude any claim by the customer for breach of duty due to poor performance.
- 8.3. Notice of defects according to 8.1 and 8.2 shall be given in writing. Any notice of defect not given in writing shall exclude any claim by the customer for defects.
- 8.4 When handling, processing, combining or mixing with other goods begins, the goods delivered shall be deemed to be approved by the customer according to the contract. This shall also apply if the goods are reshipped from their original destination.
- 8.5 Where defects are recognised, the defective goods must be left in their delivery container so that we can check the validity of the complaint properly unless we expressly waive this by written declaration - this can also be sent by telefax - and the customer ensures that the defective goods are kept separate.
- 8.6 The customer must give notice in writing immediately of any other breach of duty, setting a reasonable time limit for remedy, before the customer asserts any other rights.
- 8.7 If a defect exists, this shall be remedied at our option - except in the case of right of recourse due to delivery acc. to §§ 478, 479 BGB - by rectification or replacement free of charge, whereby we are on principle entitled to two attempts.
- 8.8 In the case of defects, the customer's payments may only be withheld to an extent which is proportionate to the material defects which have occurred. If the notice of defects is incorrect, we shall be entitled to request compensation from the customer for the expenses we incurred as a result.
- 8.9 If a breach of duty does not by way of exception relate to our work performance, the contract cannot be rescinded if our breach of duty is immaterial. Except in the case of liability for defects, the contract also cannot be rescinded if we are not responsible for the breach of duty.
- 8.10 We shall provide a warranty for verifiable material, production or construction defects - unless otherwise expressly agreed, unless there is a case of malice or intent or a damage claim for injury to life, limb and health is in question or a case of § 478 BGB (right of recourse) exists - for a period of 12 months, calculated from the date the period of statutory limitation begins.
- 8.11 The foregoing limitation period shall also apply to competing claims in tort and for any claims from consequential damage caused by the defect.
- 8.12 Further claims by the customer for or in connection with defects or consequential damage caused by the defect, for whatever reason, shall exist only subject to the provisions of paragraph 11 unless these are damage claims resulting from a warranted property or warranty which is intended to cover the customer against the risk of consequential damage caused by the defect. In this case too, however, we shall be liable only for typical and foreseeable damage.
- 8.13 Claims by the customer for expenses required to remedy defects, especially transport, route, work and material costs, shall be excluded if expenses increase because the delivery item is subsequently taken to a place other than the place of delivery, or to the customer's branch. This shall not apply in the case of recourse due to delivery according to §§ 478, 479 BGB.

8.14 Any right of recourse the customer may have against us when the goods are resold shall only exist if the customer has not reached any agreements with its buyer which exceed statutory claims based on defects (e.g. contractual penalties of the customer with its contracting partners).

8.15 Material defects and other breach of duty shall only be accepted when given in writing.

9. Prices, payment terms, objection of uncertainty

9.1 All prices are on principle quoted in euros and exclude packaging, freight, any extra charge for reduced quantities ex delivery works or warehouse, and value added tax at the legally valid rate to be borne by the customer.

9.2 Services that are not part of the scope of our quotation shall be charged, unless otherwise agreed, on the basis of the respectively valid price agreement.

9.3 We are authorised to increase prices unilaterally and reasonably (§ 315 BGB) where material procurement costs or production costs, taxes, wage and ancillary wage costs as well as energy costs and costs due to environmental charges are increased, if more than two months elapses between conclusion of the contract and delivery. An increase for the above purpose shall be excluded if the cost increase for the factors mentioned is cancelled out by a cost reduction for other factors mentioned with respect to the total cost charged for the delivery.

9.4 When, according to the contract, we bear the freight charges, the customer shall bear any additional costs arising from increases in freight rates after the contract was concluded.

9.5 Our invoices are payable without deduction at the latest 14 days after delivery. We are however entitled to request payment against delivery of the goods.

9.6 We are entitled, despite the customer's other terms, first to set off payments against the customer's earlier debts. We shall inform the customer on how they are set off. If costs and interest have already been incurred, we shall be authorised to set off payment first against costs, then interest and finally against the principal payment.

9.7 The customer shall default in payment, even without a reminder, within 15 days of delivery where we have an obligation to deliver or within 15 days after we have issued a notice that the goods are ready for delivery in the case of delivery ex works. If a binding payment date was agreed, the customer shall be in default if it fails to meet this payment date.

9.8 Once in default, maturity interest of 8% above the respective base rate shall be calculated. This interest shall be lowered if the customer proves that charges are lower; we are permitted to prove that damage is higher.

9.9. Furthermore, if the customer is in default, we shall be entitled to retain deliveries or services based on all contracts with the customer until the customer meets all obligations in full. The customer can avoid this right of retention by providing a directly enforceable guarantee from a major German bank unlimited in time or from a public-sector financial institution linked to a deposit insurance fund for the amount of all our due claims.

9.10 The date payment is received by us or credited to our account shall be deemed the payment date. We reserve the right to assert damage in excess of this. Furthermore, default in the fulfilment of one claim shall cause all our other claims from the business relationship to become due immediately.

9.11 If payment terms are not met by the customer or circumstances known or recognisable that in our proper commercial judgement give rise to justified doubt about the customer's creditworthiness, also including such facts that existed when the contract was concluded but which were unknown to us or should have been known to us, we shall be authorised, notwithstanding further statutory rights in such cases, to cease further work on current orders

or delivery and to request advance payments or the provision of objectively appropriate securities for deliveries still outstanding and - after expiry of a reasonable period of grace to provide such securities without result - to rescind the contract - irrespective of other statutory rights. The customer shall be obliged to reimburse us for all damages incurred by the non-performance of the contract.

- 9.12 If payments are allowed to be deferred and then paid at a later date than agreed, interest of 8% above the base rate applied when the deferment agreement was concluded shall be owed for the period of deferment without requiring a notice of default.
- 9.13 The customer shall have a right of retention or right of set off only regarding those counter-claims that are not disputed or have been recognised by declaratory judgment unless the counter-claim is based on a breach of material contractual obligations by us.

10. Retention of title

- 10.1 We retain title to all goods we deliver (hereinafter referred to as a whole as “goods subject to retention of title”) until all claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance in our favour when any or all claims by us are incorporated in a current invoice (current account) and the balance has been established.
- 10.2 The customer must insure the goods subject to retention of title adequately, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to the goods subject to retention of title are herewith assigned to us in the value of the goods subject to retention of title.
- 10.3 The customer is authorised to resell the delivered goods in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by third party buyers when resold, the customer shall be obliged to resell under retention of title only. Authorisation to resell the goods subject to retention of title shall not apply a priori if the customer suspends payment or defaults in payment to us. This shall also apply if the customer is bound by a group of companies and/or if one of the circumstances stated in the above sentence occurs at the parent or ultimate holding company.
- 10.4 The customer herewith assigns to us all claims including securities and ancillary rights that accrue to it against the end user or third parties from or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its buyers that excludes or impairs our rights in any way or nullifies the claim's assignment in advance. When the goods subject to retention of title are sold with other items, the claim against third party buyers amounting to the delivery price agreed between us and the customer shall be deemed assigned unless the amounts applicable to the individual goods can be determined from the invoice.
- 10.5 The customer shall be entitled to collect a claim assigned to us until revoked by us, this revocation being admissible at any time. At our request, the customer is obliged to forward to us information and documents required to collect assigned claims, and unless we do so ourselves, notify its buyers immediately of the assignment.
- 10.6 If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its buyers, the customer shall herewith assign to us any recognised closing balance in its favour in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title, such claim being transferred to the current account relationship.
- 10.7 The customer must notify us immediately if the customer has already assigned claims from the resale of goods delivered or to be delivered by us to third parties, especially due to real or unreal factoring, or made other agreements which can impair our current or future security interests according to this paragraph 10. In the case of unreal factoring, we shall be

authorised to rescind the contract and request the goods already delivered to be handed over; this shall also apply to real factoring if, according to the contract with the factor, the customer is not free to dispose of the purchase price of the claim.

- 10.8 In the event of conduct in breach of the contract, especially in the case of default in payment, we shall be authorised - without first having to rescind the contract - to take back all goods subject to retention of title. The customer shall be obliged in this case to hand over the goods subject to retention of title immediately unless it is responsible for an immaterial breach of duty only. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods we delivered. Taking back the goods subject to retention of title shall only involve rescinding the contract if we expressly state this in writing or this is expressly prescribed by obligatory statutory provisions. The customer must notify us immediately in writing of any third-party access to goods subject to retention of title or any claim assigned to us.
- 10.9 If the value of securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 10%, we shall be obliged at the customer's request to release securities at our option.
- 10.10. We handle and process the goods subject to retention of title as manufacturers within the meaning of § 950 BGB but without any obligation. If the goods subject to retention of title are processed or connected inseparably with other items that do not belong to us, we shall acquire co-ownership in the new article in the ratio of the invoice value for our goods to the invoice values for the other processed or connected items. If our goods are connected with other movable items into a uniform article that is deemed the principal article, the customer shall herewith already assign co-ownership thereof to us in the same ratio. The customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to follow up our ownership or co-ownership rights.

11. Liability; exclusion and limitation of liability

- 11.1 We shall be liable according to statutory provisions for our own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by our legal representatives or vicarious agents. We shall also be liable according to statutory provisions for breach of material contractual obligations in case of any negligence and in the event of impossibility for which we are responsible and in the event of injury to life, limb and health, in case of any negligence also caused by legal representatives or vicarious agents. This shall also apply where we have assumed a warranty for the workmanship of our performance or the existence of successful performance or a procurement risk and in cases of violation of other obligations within the meaning of § 241 (2) BGB, when it is no longer reasonable to expect the customer to accept our performance and in other cases of compulsory statutory liability.

“Material contractual obligations” are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

- 11.2 In cases other than those stated in 11.1 above, we shall also be liable according to statutory provisions for culpable breach of duty – irrespective of the legal nature of the claim asserted – for all damage claims asserted against arising from this contractual relationship but not in the case of minor negligence.
- 11.3 In the event of our liability under 11.2. above and in the event of liability without negligence, especially given initial impossibility and defects of title and also in the case of violation of a material contractual obligation, we shall be liable only for typical and foreseeable damage

unless we or our executives or vicarious agents are reproached with intentional or grossly negligent breach of duty.

- 11.4 Liability for indirect damages and consequential damage caused by a defect shall be excluded unless we have violated a material contractual obligation or we, our managers or vicarious agents are reproached for intentional or grossly negligent breach of duty.
- 11.5 Liability for damage other than the liability stipulated in the above paragraphs shall be excluded without regard for the legal nature of the asserted claim. This shall apply in particular to damage claims arising from negligence when concluding a contract due to other breach of duty or due to fraudulent claims for property damages according to § 823 BGB.
- 11.6 Exclusion resp. limitation of liability according to the foregoing 11.1. to 11.5. shall apply to the same extent for the benefit of executive and non-executive employees and other vicarious agents as well as our sub-contractors.
- 11.7 Claims by the customer for damage from the contractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory limitation period. This shall not apply if we are culpable of malice, gross negligence or intent or a case of §§ 478, 479 BGB (right of recourse) exists.
- 11.8 There is no connection between the reversal of the burden of proof and the foregoing stipulations.

12. Place of performance, legal venue, applicable law

- 12.1 Place of performance for all contractual obligations is Oberhausen.
- 12.2 Sole legal venue for any disputes is also Oberhausen.
- 12.3 The Law of the Federal Republic of Germany shall exclusively apply to all legal relations between the customer and ourselves. The UN Sales Convention (CISG) is expressly excluded. The above stipulations shall also apply if the customer is a foreigner or its registered office is located abroad.

13. Institution of insolvency proceedings, suspension of payments

- 13.1 A petition to institute insolvency proceedings by the customer or the customer's suspension of payments due to rights of retention or other rights shall entitle us to rescind the contract at any time or make delivery of the item dependent on the prior fulfilment of the payment obligation. If the item was already delivered, the purchase price shall be due immediately in such cases. We shall also be entitled to reclaim the delivery item in the above-mentioned cases and to retain it until the purchase price is paid in full.
- 13.2 If the customer suspends payments, or files an insolvency petition, the customer shall no longer be authorised to sell, process, combine or mix goods subject to retention of title (see 10.1). In such case, the customer must immediately store and label the goods subject to retention of title separately, and amounts, to which we are entitled from assigned claims for goods delivered and which the customer receives, must be held in trust for us.

14. INCOTERMS

If our order confirmation includes a clause stipulated in the INCOTERMS (e.g. freight paid ex works etc.), the INCOTERMS as last amended shall apply to the respective clause unless otherwise stated in our order confirmation.

15. Severability clause

If individual terms and conditions are invalid for reasons other than §§ 305 - 310 BGB, this shall not affect the remaining provisions. Instead of the invalid provisions, a stipulation shall automatically apply which most closely corresponds to the legally admissible economic intent.

Note:

According to the provisions of the Bundesdatenschutzgesetz [Federal Data Protection Act], we draw attention to the fact that we operate EDP equipment, and that we also in this respect store data received as a result of the business relationship with the customer.

Oberhausen, Version 09/10/06
