

General Terms and Conditions of Sale of Bode GmbH

Section 1 General terms

(1) All supplies and services, including those falling under contracts concluded in the future, shall be governed exclusively by the following Terms and Conditions of Sale. We shall not recognise any terms and conditions of the Buyer that contradict with or depart from our own Terms and Conditions of Sale unless we have expressly consented to their applicability in writing. Our General Terms and Conditions of Sale are also applicable in cases where, with knowledge of conditions on the part of the Buyer which contradict or deviate from our General Terms and Conditions of Sale, we ship an order to the Buyer without reservation.

(2) All agreements reached between us and the Buyer are set forth in writing in this contract. Any amendments or supplements must be made in writing.

(3) Any agreements reached by field sales staff shall only be valid if confirmed by us in writing.

(4) Our General Terms and Conditions of Sale shall only apply in respect of entrepreneurs [*Unternehmer*] within the meaning of Section 310(1) of the German Civil Code [*Bürgerliches Gesetzbuch* - BGB].

Section 2 Offer - prices

(1) Our offers are always subject to confirmation. A transaction shall only be concluded by our issue of a written order confirmation.

(2) All prices shall only be valid for the relevant deliveries agreed to and shall not be binding for follow-up orders.

(3) Unless agreed otherwise in the specific individual case, all prices are quoted ex works or from our delivery warehouse. The costs of shipment along with any taxes, charges, duties and any other costs shall be borne by the Buyer. In the event that delivery is to be made abroad, the Buyer shall also bear all other costs arising in relation to shipment abroad; it shall bear sole liability for any duties levied on the goods until definitive customs clearance.

(4) In the event that any additional costs not foreseeable upon conclusion of the contract arise at this stage in relation to the goods that are to be delivered by us, such as e.g. newly introduced or increased duties, freight charges, taxes and other levies, we shall be entitled to increase the price agreed upon by a maximum amount of these costs.

The same shall apply, *mutatis mutandis*, in the event of a change in the value of the euro during contractual performance if the contract was concluded on the assumption of a particular value of the euro as compared to another currency. If any of the above-mentioned circumstances should arise and result in an increase in the cost of the goods ordered, we shall be obliged to inform the Buyer of this fact without undue delay. The Buyer may withdraw from the contract within 6 weeks of receipt of such notice. It shall not be entitled to claim compensation in such an eventuality.

(5) If delivery with carriage paid has been agreed to, the Buyer shall bear the cost difference between the ordinary shipping or postage charges and the actual costs in the event of expedited, express or courier shipments etc.

(6) No amount will be credited for collection in person.

(7) We shall only take out transport insurance at the express written request of the Buyer. The costs of such insurance shall be borne by the Buyer.

Section 3 Deliveries - deadlines

(1) Delivery deadlines shall only be binding if the relevant deadline has been expressly confirmed in advance in writing.

(2) Fulfilment of our delivery obligation is also conditional upon the timely and proper fulfilment of the buyer's obligations. We reserve the right to assert the defence of non-performance of the contract. If the Buyer is late in accepting or culpably breaches any other duties of cooperation, we shall be entitled to claim compensation for the losses thereby arising for us, including any additional expenditure.

(3) For call-off orders, the individual deliveries must be called off in good time, so as to enable us to comply with any delivery deadlines agreed to. In relation to call-off orders we shall also be entitled to produce the entire order quantity immediately. In such an eventuality, it will not be possible to accept any changes requested after the order has been placed.

(4) We shall bear liability according to law, where the underlying contract of sale is a transaction with a binding deadline within the meaning of Section 286(2) No. 4 of the German Civil Code [*Bürgerliches Gesetzbuch*, BGB] or Section 376 of the German Commercial Code [*Handelsgesetzbuch*, HGB]. We shall also bear liability according to law in the event that the Buyer is entitled to claim that it no longer has any interest in further contractual performance as a consequence of a delay in delivery for which we are at fault. We shall also bear

liability according to law where the delay in delivery results from a wilful or grossly negligent breach of contract for which we are at fault or from the culpable breach of a material contractual duty. Any fault on the part of our representatives or vicarious agents shall be imputed to us. If a delay in delivery does not result from a wilful breach of contract for which we are at fault, our liability to pay damages shall be limited to the typical loss foreseeable at the time the contract was concluded. Under all circumstances, our liability shall be limited to 3% of the value of the shipment for each completed week of delay, subject however to a maximum of 10% of the value of the shipment. Otherwise, we shall not incur any liability in relation to any delay.

(5) We shall only be obliged to deliver goods that we have produced ourselves and only in the quantities actually available to us.

(6) In the event of any extraordinary events either nationally or abroad that are beyond our control and were unforeseeable for us, despite exercising all due care, where these prevent us from delivering in accordance with the contract or from doing so at reasonable financial cost, taking account of any other delivery obligations, we shall be entitled to limit or discontinue delivery for the duration of the impediment or - in the event of a longer impediment - to withdraw from the contract or to cancel it without notice. An extraordinary event shall consist e.g. in war or armed conflict including the consequences thereof, civil unrest, interruptions to operations for which we are not at fault, industrial action, restrictions imposed by executive or legislative measures and the unavailability of or delayed transportation. Where any events of the above-mentioned type lead to a significant increase in the costs of production, procurement or distribution, we shall be entitled, subject to a requirement of notification, to increase the price by up to a maximum of the amount of such additional costs, even in the event that a fixed price has been agreed to. Section 2 (4) shall apply *mutatis mutandis*.

(7) For goods made to order, the tolerance on the agreed order quantity shall be +/- 10%.

(8) Any parts provided by the Buyer for processing must be consistent with drawings. Any costs for reworking or return shipment shall be borne by the Buyer. The quantity of parts sent must exceed the number of finished items ordered by at least 10%.

Section 4 Acceptance and delayed acceptance

(1) The Buyer shall also be deemed to be late in accepting the goods if we have offered to it in writing to deliver and it has refused to accept.

(2) Where we are able to claim damages due to non-performance in the event of the failure to accept, we shall be entitled to calculate the specific losses. The Buyer shall be at liberty to prove that the actual losses incurred were lower.

Section 5 Intra-Community deliveries

(1) The Buyer undertakes to take action as a business to ensure under all circumstances the tax-free intra-Community supply, transportation, shipment or collection and, where applicable, tax-free performance. It or its appointee shall therefore be obliged to provide to us and inform us of all necessary documents to ensure accounting or documentary proof of intra-Community supply, transportation, shipment or collection.

(2) This shall include in particular:

- the VAT identification number;
 - an assurance by the Buyer that the supply will be used by its foreign business, along with confirmation of receipt from the Buyer or its appointee;
 - details of the place of destination elsewhere in the European Union (confirmation of successful delivery);
- and
- information concerning the industrial branch or occupation of the Buyer.

(3) Should the Buyer fail to comply with these duties to present information of its own accord, it shall bear full liability for the resulting consequences; in particular, the Buyer shall without undue delay pay up any value added tax, interest and late payment fines subsequently levied on us and compensate any additional costs arising for us.

(4) We shall only be obliged to file an appeal at the request of the Buyer if it pays a reasonable cost advance for the appeal procedure, in addition to the payment of the above-mentioned amounts.

Section 6 Type of shipment - transfer of risk

(1) Unless agreed otherwise, the type of shipment shall be selected at our own discretion.

(2) The risk of the loss of or any accidental damage to the goods shall transfer to the Buyer as soon as the goods have departed from our factory or delivery warehouse. If we ship the goods at the request

of the Buyer to a delivery destination specified by it, the transportation risk shall pass to the Buyer - even in the event of delivery "carriage paid" - upon the handover of the goods to the carrier, the freight forwarder or the other person or entity otherwise designated to ship the goods.

Section 7 Industrial property rights - advice - intellectual property

(1) If we produce products according to the instructions of the Buyer, the Buyer warrants that the production and marketing of such a product will not infringe any third-party industrial property rights. The Buyer is obliged to hold us harmless in respect of any liability towards third parties or third-party claims arising in relation to the production or marketing of the products concerned.

(2) We only provide technical indications and/or advice as recommendations and without any commitment; we therefore do not provide any warranty and shall not incur any liability in this regard. It shall be for the Buyer to carry out an examination under its own responsibility, including in relation to the information contained in the documentation provided by us, and also regarding the existence of any industrial property rights.

(3) Any drafts, diagrams or production and assembly documentation etc. drawn up by us are and shall remain our intellectual property. If they are provided to the Buyer, they shall be entrusted to it pursuant to Section 18 of the German Act against Unfair Competition [*Gesetz gegen den unlauteren Wettbewerb*, UWG]. Any transfer of usage rights over and above those necessary in order to perform the contract must be expressly agreed to in writing, irrespective of whether or not any particular industrial property rights exist.

Section 8 - Claims relating to defects

(1) Claims relating to defects may only be brought by the Buyer if it has duly complied with its duties to inspect and object according to Section 377 HGB. The Buyer is obliged to inspect the goods carefully without undue delay after receipt. It shall examine - as the case may be by a trial run - whether the goods delivered are fault-free and usable for the intended purpose. Without prejudice to any shorter deadlines for objecting with the carrier, defects must be reported to us in writing no later than 14 days after delivery of the goods, failing which any liability on our part shall lapse.

(2) The Buyer shall bear the full burden of proving all of the constituent elements of its claim,

including in particular the defect itself, the time when the defect was established and that the defect was objected to in good time.

(3) In the event of any defects, we may in the first instance, at our choice, rectify the defect (rectification) or supply a fault-free item (replacement supply). If subsequent performance by us is unsuccessful, the Buyer may in principle, at its choice, either reduce the amount payable or withdraw from the contract. Rectification shall be deemed to have been unsuccessful in particular if we have failed to rectify the defect after the third attempt at remedial performance. We shall be entitled at any time when attempting rectification to choose subsequent performance. The Buyer shall have no right of withdrawal in relation to merely minor defects or merely minor differences in quality.

(4) If the Buyer chooses to withdraw from the contract on account of defective title or a quality defect following the failure of subsequent performance, it shall not also be entitled to claim damages in relation to the defect. If the Buyer chooses to claim damages following the failure of subsequent performance, the goods shall be retained by the Buyer, provided that this is reasonable for it. Damages shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply in the event that we have brought about the breach of contract in bad faith.

(5) We shall bear liability according to law in the event that the Buyer claims damages on account of wilful action or gross negligence, including wilful action or gross negligence on the part of our representatives or auxiliary agents. Unless a wilful breach of contract is alleged against us, liability for damages shall be limited to the typical average losses foreseeable upon conclusion of the contract.

(6) In addition, we shall bear liability according to law in the event of a culpable breach by us of a material contractual duty; however, in such an eventuality liability for damages shall be limited to the typical average losses foreseeable upon conclusion of the contract.

(7) The foregoing shall be without prejudice to liability for culpable loss of life, personal injury or damage to health, and also to mandatory liability under the German Product Liability Act [*Produkthaftungsgesetz*, ProdHaftG].

(8) Unless specified otherwise above, we shall not incur any liability.

(9) A limitation period of 12 months shall apply to claims relating to defects, calculated from the time when the availability of the claim became known. This shall not apply in the event that the item sold could have been and was actually used for a

construction site and resulted in a construction defect, without prejudice to Section 9 No. 1 Sentence 5.

(10) The foregoing shall be without prejudice to the limitation period in the event of supplier withdrawal pursuant to Sections 478 and 479 BGB; this period shall amount to five years, calculated from delivery of the defective item.

(11) The Buyer shall not receive any warranties within the legal meaning of the word. The foregoing shall be without prejudice to manufacturer warranties.

(12) The agreed quality of the goods shall in principle be that stated in the product description provided to us. Otherwise, any public statements, promotions or advertising in relation to the goods shall not constitute information as to the contractual quality of the goods. Any samples provided by us constitute only non-binding indications concerning the average quality of the goods.

(13) Should it be necessary to rectify any defect, we shall be obliged to bear all costs arising in relation to the rectification of the defect, including in particular the costs of shipping, road, work and materials, except insofar as these are increased by the relocation of the item purchased to a location different from the place of performance.

Section 9 - Disclaimers

(1) In the event of a breach of duty resulting from minor negligence, our liability shall be limited to the direct typical average losses foreseeable upon conclusion of the contract, having regard to the type of product or service. This shall also apply in the event of a breach of duty resulting from minor negligence on the part of our statutory representatives, senior staff or auxiliary agents. We shall not incur any liability in the event of the breach of a non-material contractual duty resulting from minor negligence.

(2) The above disclaimer shall apply irrespective of the legal status of the claim made, in particular whether pursuant to default, another breach of duty or a tortious act. It shall not apply in relation to losses imputable to us in relation to loss of life, personal injury or damage to health or any product liability claims available to the Buyer.

(3) Where these provisions exclude the payment of compensation in lieu of performance, the reimbursement of expenses pursuant to Section 284 BGB shall also be excluded.

(4) Damages claims of the Buyer in relation to a defect shall lapse one year after delivery of the goods. This shall not apply in the event that gross negligence can be invoked against us and in the

event of personal injury, damage to health or loss of life imputable to us. The limitation period shall also apply to the individual liability of our staff, representatives and vicarious agents.

Section 10 - Payment

(1) The purchase price shall be payable without any deduction immediately upon receipt of the invoice, unless any different payment terms have been agreed to. Payment shall only be deemed to have been made on time if we are credited with the funds on the due date into the account specified by us. If payment is not made within the deadline agreed upon or specified by law, we shall be entitled to charge default interest at the statutory rate. We shall also be entitled to claim further default interest, which shall be without prejudice to the entitlement of the Buyer to furnish proof to the effect that the loss incurred was lower.

2) Cheques and bills of exchange shall only be received pending the subsequent discharge of the debt. Any costs and expenses shall be borne by the Buyer.

(3) We shall be entitled to withhold performance in the event of a deterioration in the financial circumstances of the Buyer. We shall be entitled to set a grace period and to effect performance only *pari passu* with the payment of consideration or to demand security from the Buyer. Upon expiry of this grace period, we shall be entitled to withdraw from the contract.

A deterioration in the financial circumstances of the Buyer shall be deemed to have occurred in particular in the event that ordinary business operations are no longer possible. This shall be deemed to be the case in particular in the event of:

- a protested cheque or bill of exchange;
- the seizure of assets or the threat or imposition of other debt enforcement measures;
- a delay or the discontinuation of payments;
- judicial or out-of-court debt restructuring procedures;
- insolvency procedures in relation to it; or
- the application for opening proceedings German Insolvency Code [*Insolvenzordnung*, InsO];
- or any similar circumstances that call into question the creditworthiness of the Buyer.

The Buyer shall be obliged to inform us directly, immediately and unsolicited if any of these circumstances or any similar circumstance arise(s).

Any goods that have been delivered by us and are still being stored by the Buyer shall be separated immediately and shall be marked as being our property.

The foregoing shall be without prejudice to all other claims arising under law in relation to the default.

(4) It shall not be permitted to offset any counter-claims that are disputed by us and have not been established with legal effect. A right of retention shall only be available if it is undisputed and is based on the same contractual relationship.

Section 11 - Reservation of title by way of security

(1) We shall retain ownership of the item purchased until the definitive payment of all amounts due by the Buyer, including any claims subsequently arising under reciprocal business relations. In the event of a breach of contract by the Buyer, including in particular payment default, we shall be entitled to take back the item purchased. The same shall also apply if an application for the opening of insolvency procedures is made in relation to the assets of the Buyer. The taking back by us of the item purchased shall not imply withdrawal from the contract, unless expressly so declared by us in writing. After the item has been taken back we shall be entitled to dispose of it; the proceeds of disposal shall be offset against the liability of the Buyer, less reasonable disposal costs.

(2) The Buyer shall be obliged to handle the item purchased with care; in particular, it shall be obliged at its own cost to insure it sufficiently for its replacement value against losses caused by fire, water and theft. The Buyer hereby assigns to us any claims arising in relation to any loss, including in particular those against the insurer, up to the value of our claims as collateral for our claims. We hereby accept the assignment.

(3) In the event of seizures or other third-party interference, the Buyer shall inform us promptly in writing and provide us with all documentation necessary to intervene in order to enable us to bring an action pursuant to Section 771 of the German Code of Civil Procedure [*Zivilprozessordnung, ZPO*]. If the third party is unable to reimburse us for judicial and out-of-court costs in relation to a claim or the recovery of the goods, the Buyer shall be liable towards us for the shortfall arising.

(4) The Buyer shall be entitled to sell the item purchased during the ordinary course of business, although not to pledge it or to transfer ownership by way of security. The Buyer hereby assigns to us all claims in the amount of the final figure invoiced and payable to us (including value added tax) arising for it in relation to the onward sale against

its purchasers or third parties, irrespective of whether the item purchased has been sold on without or after processing. We hereby accept the assignment. The Buyer shall remain entitled to collect such amounts due also after the assignment. The foregoing shall be without prejudice to our ability to collect the amounts due ourselves. However, we undertake to refrain from collecting the claim for as long as the Buyer complies with its payment obligations out of the proceeds collected and does not default on any payments and in particular unless and until any application is made for the initiation of insolvency procedures or in the event of a cessation of payments. Should this occur, we may require that the Buyer give notice to us of the assigned claims and the respective debtors, provide all information necessary for collection, issue the relative documentation and give notice of the assignment to the (third party) debtors.

(5) If the item purchased is inseparably processed or mixed with other items not owned by us, we shall acquire joint ownership over the new item in proportion with the value of the item purchased (amount of the final invoice including value added tax) as compared to the other items processed or mixed at the time of processing or mixing. If processing or mixing occurs in such a manner that the Buyer's item is to be regarded as the principal object, it is agreed that the Buyer shall transfer a pro rata share of joint ownership to us. The Buyer shall retain the sole or joint ownership thereby established on our behalf.

(6) We undertake to release the collateral provided to us upon request by the Buyer where the realisable value of our collateral exceeds the claims secured by more than ten percent; it shall be for us to choose which collateral to release.

(7) The Buyer grants us the right to access its business and storage premises or the premises on which the goods subject to the reservation of title are situated and to transport the goods subject to the reservation of title away from that location, where the relevant prerequisites are met. The Buyer waives in advance any right to object to removal.

Section 12 Place of jurisdiction - place of performance

(1) If the Buyer is a merchant [*Kaufmann*], a legal person governed by public law or a special fund under public law, the place of jurisdiction shall lie at the place of our registered office; however, we shall be entitled to initiate legal action against the Buyer also before the courts at its domicile. The

same shall apply in the event that the Buyer does not have a general place of jurisdiction in Germany or if its habitual residence at the time the claim is brought is unknown.

(2) The place of performance for the supply shall be the relevant dispatch warehouse or facility. The place of performance for the Buyer's payment obligation shall be Henstedt-Ulzburg.

(3) The laws of the Federal Republic of Germany apply subject to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).