

General terms and conditions of delivery and payment of the company **BBM ehrhardt GmbH**

(valid starting 08/09/2020)

A lasting and sustainable business relationship is not founded on delivery and payment terms, but cooperation and mutual trust. Nevertheless, we cannot avoid regulating some points in our terms of delivery and payment for all delivery transactions with our customers deviating from or in addition to the statutory provisions which otherwise apply, whilst at the same time expressly objecting to our customers' terms of order, also in advance for all future transactions

I. General

The following terms of delivery and payment apply exclusively and for the entire business relationship with our customers. The Buyer accepts them as binding for the present contract and also for all future transactions. Any deviating agreement requires our written confirmation, e.g. conclusion of contract according to the German Construction Tendering and Contract Regulations (VOB). Any deviating purchasing terms and conditions of the buyer, which we do not expressly accept in writing shall not be binding on us. The following terms and conditions of sale shall also apply if we execute the buyer's order without reservation whilst being aware of conflicting or deviating terms and conditions of the Buyer.

II Offer and conclusion

1. If the order is to be qualified as an offer according to § 145 of the German Civil Code (BGB), we can accept this in writing within 2 weeks. An effective contract is therefore only concluded once we accept the offer (order confirmation). Otherwise, our offers are non-binding unless they are designated as binding in writing. We reserve our property rights, copyrights and other protective rights to cost estimates, drawings and other documents; they may not be made accessible to third parties and must be returned immediately on request if the order is not placed.

2. Drafts, elaborations and cost estimates made in advance at the customer's request will be charged at cost price if an order is not placed.

3. We shall not be obliged to investigate whether the information and documents provided to us by the customer or third parties are correct. By accepting our order confirmation or returning our drawings etc. with or without the buyer's approval note, the buyer assumes liability for the correctness of his order.

4. Unless otherwise stated in the sales agreement, our prices are "ex works". Costs for packaging, freight and customs are not included in the price. These will be invoiced separately. The statutory value added tax is not included in our prices and will be shown separately in the invoice at the statutory rate on the billing date. If, after more than 4 months from the conclusion of the contract or offer, collectively agreed salary and wage increases, general material price increases, increases in taxes, etc. occur, we are entitled to a corresponding price increase. We will send the buyer a correspondingly amended order confirmation before delivery. In this case, the buyer can withdraw from his order with regard to the goods whose price has increased. He must give written notice of withdrawal no later than 3 business days after receipt of the amended order confirmation. Notice by fax or email suffices.

The deduction of a discount requires a special written agreement.

5. Each delivery shall be deemed to be a transaction in itself; any discrepancies in individual deliveries shall have no retroactive effect on the others.

6. For on-demand purchases, we are not obliged to keep stocks; we must be granted a reasonable period of time. On-demand orders must be accepted within one year of confirmation, otherwise we are free to cancel the remainder and issue an invoice for the backlog.

7. If, after conclusion of the contract, we become aware of circumstances which give rise to doubts about the solvency of the Buyer, we may make further deliveries dependent on advance payment of the goods by the Buyer. We can provide the buyer with a reasonable deadline for the advance payment of the goods and withdraw from the contract if the advance payment is not received by us within the deadline; the buyer can provide security by bank guarantee instead of the advance payment. If we have already delivered the goods, the purchase price shall be due immediately without deduction, irrespective of any agreed payment periods. Doubts about the solvency of the buyer are justified, among other things, if an application has been made to open insolvency proceedings against his assets or if he does not make payments to us or third parties on time.

III. Delivery periods

1. Delivery dates or deadlines that have not been expressly agreed as binding are exclusively non-binding information. The delivery time stated by us does not begin until technical questions have been clarified. Likewise, the Buyer must fulfil all obligations incumbent upon him in a proper and timely manner.

2. If the underlying purchase contract is a transaction for delivery by a fixed date according to § 286 II No. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code), we shall be liable in accordance with the statutory provisions. The same shall apply if the Buyer is entitled to claim the loss of his interest in the further performance of the contract as a result of a delay in delivery for which we are responsible. In this case, our liability is limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional breach of contract for which we are responsible, whereby fault on the part of our representatives or vicarious agents is to be attributed to us. We shall also be liable to the Buyer in the event of a delay in delivery in accordance with the statutory provisions if this is due to an intentional or grossly negligent breach of contract for which we are responsible, whereby fault on the part of our representative or vicarious agent is to be attributed to us. Our liability is limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional breach of contract for which we are responsible.

3. In the event that a delay in delivery for which we are responsible is due to a culpable breach of a material contractual obligation, whereby fault on the part of our representatives or vicarious agents is attributable to us, we shall be liable in accordance with the statutory provisions, subject to the proviso that in this case liability for damages shall be limited to the foreseeable, typically occurring damage. A material contractual obligation exists if the breach of duty relates to an obligation on the fulfilment of which the customer has relied and was entitled to rely.

4. Any further liability for a delay in delivery for which we are responsible is excluded. The further statutory claims and rights of the Buyer to which he is entitled in addition to the claim for damages due to a delay in delivery for which we are responsible shall remain unaffected.

5. If the Buyer is in default of acceptance, we are entitled to demand compensation for the resulting damage and any additional expenses. The same applies if the Buyer culpably violates duties to cooperate. The risk of accidental loss or accidental deterioration of the object of sale shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.

6. If, due to force majeure or other extraordinary circumstances for which we are not responsible, performance is temporarily impossible or considerably impeded in whole or in part, the agreed delivery period shall be extended by the duration of the impediment to performance. The same applies to a statutory obligation, or an obligation on the part of the Buyer, or the deadline set by the Buyer for the performance of the service, in particular for additional periods in the event of default. Prior to the expiry of the extended delivery period or performance period, the Buyer is neither entitled to withdraw from the contract nor to claim damages. If the impediment to performance lasts longer than 4 weeks, both the Buyer and we shall be entitled to withdraw from the contract insofar as the contract has not yet been performed. If the Seller is contractually or legally entitled to withdraw from the contract without setting a grace period, this right remains unaffected.

7. Unless expressly agreed otherwise in writing, we shall be entitled to make partial deliveries to a reasonable extent, which shall be invoiced individually.

IV. Transfer of risk and shipment

1. Shipment is always at the expense and risk of the Buyer.

2. We do not take back transport packaging and all other packaging in accordance with the German Packaging Ordinance; with the exception of pallets. The Buyer shall be responsible for the disposal of the packaging at his own expense.

3. The risk shall pass to the Buyer even if freight-free delivery has been agreed and/or dispatch is effected with our own vehicles: with notification of readiness for dispatch, before loading of the delivery parts in our works, even if delivery is delayed at the request of the Buyer. We are not obliged to provide transport insurance.

4. If dispatch or delivery is delayed at the request of the Buyer, the Buyer may be charged storage costs of ¼ per cent of the invoice amount for each month or part thereof, commencing one month after notification of readiness for dispatch; the storage costs shall be limited to 5 per cent, unless higher costs can be proven.

5. Delivered objects are to be accepted by the customer, even if they show minor defects. Partial deliveries are permissible.

V. Installation and assembly

1. The Buyer bears the costs for and provides the following in a timely manner:

a) Auxiliary personnel such as manual workers and other skilled workers in the required number b) All earthwork, bedding, construction and scaffolding work and other ancillary work including all required building materials, c) The equipment required for installation and commissioning such as lifting gear, as well as commodities, auxiliary and operating materials etc. d) Heating, lighting and operating power including the necessary connections up to the point of use. e) For the storage of machine parts, materials, tools, sufficiently large, suitable, dry and lockable rooms as well as appropriate working and recreation rooms.

2. Prior to the start of assembly, the delivery parts required for the start of the assembly work must be on site and all masonry, carpentry and other preparatory work must have progressed to such an extent that the assembly can be carried out immediately after the arrival of the fitters and without interruption. In particular, the access routes and the installation site must be levelled and cleared at floor level, wall and ceiling plastering must be completely finished and doors and windows must be fitted in the case of indoor installation.

3. If the commencement of work is delayed due to circumstances on the construction site for which we are not responsible, the customer shall bear all costs for waiting time and further necessary travel of the fitters.

4. To the best of his knowledge, the customer shall certify the fitters' working hours on a weekly basis and shall immediately hand over a written confirmation of the completion of the installation. We shall be at liberty to engage suitable subcontractors if necessary.

5. We shall only be liable for proper handling and installation of the delivery items, not for the work of our vicarious agents, insofar as this is not connected with the delivery and installation or insofar as the same is initiated by the customer.

VI. Liability for defects in the delivery

1. Claims for defects on the part of the Buyer shall only exist if the Buyer has fulfilled his obligations to inspect the goods and give notice of defects in accordance with § 377 of the German Commercial Code (HGB). Wear parts are generally excluded from the warranty.

2. In the case of justified notices of defect, we are first and foremost obliged to provide supplementary performance, unless we are entitled to refuse supplementary performance on the basis of statutory regulations. The Buyer shall grant us a reasonable period of time for subsequent performance. Subsequent performance may be effected, at the buyer's option, by remedying the defect (subsequent improvement) or by delivery of new goods. In the event of rectification of the defect, we shall bear the necessary expenses insofar as these are not increased because the subject matter of the contract is located at a place other than the place of performance. Only if the supplementary performance has failed or has not been carried out within the reasonable period of time, the Buyer may, at his discretion, demand a decrease of the purchase price (reduction) or declare his withdrawal from the contract. The rectification of defects shall be deemed to have failed with the second unsuccessful attempt, unless further attempts at rectification are reasonable and acceptable to the Buyer due to the subject matter of the contract. The Buyer may only assert claims for damages under the following conditions on account of the defect if the subsequent performance has failed. The right of the Buyer to assert further claims for damages under the following conditions remains unaffected.

3. The Buyer's warranty claims shall expire one year after delivery of the goods to the buyer, unless we have fraudulently concealed the defect; in this case the statutory provisions shall apply.

4. Irrespective of the following limitations of liability, we shall be liable in accordance with the statutory provisions for damage to life, limb and health resulting from a negligent or intentional breach of duty by us, our legal representatives or our vicarious agents, as well as for damage covered by liability under the German Product Liability Act. For damages not covered by sentence 1, which are based on intentional or grossly negligent breaches of contract as well as fraudulent intent by us, our legal representatives or our vicarious agents, we shall be liable in accordance with the statutory provisions. In this case, however, the liability for damages shall be limited to foreseeable, typically occurring damage, unless we, our legal representatives or our vicarious agents have acted intentionally. To the extent that we have given a quality and/or durability guarantee with regard to the goods or parts thereof, we shall also be liable within the scope of this guarantee. However, we shall only be liable for damages which are based on the absence of the guaranteed quality or durability, but which do not occur directly in the goods, if the risk of such damage is obviously covered by the guarantee of quality and durability.

5. We shall also be liable for damages caused by simple negligent breach of such contractual obligations, the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the Buyer regularly relies and may rely. However, we shall only be liable to the extent that the damage is typically associated with the contract and is foreseeable.

6. Any further liability is excluded regardless of the legal nature of the asserted claim, this applies in particular to tortious claims or claims for reimbursement of futile expenses instead of performance. Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, workers, co-workers, representatives and auxiliary persons.

7. Claims for damages by the Buyer due to a defect shall become time-barred one year after delivery of the goods. This shall not apply in the event of injury to life, limb or health for which we, our legal representatives or our vicarious agents are responsible, or if we, our legal representatives have acted with intent or gross negligence, or if our ordinary vicarious agents have acted with intent.

VII. Retention of title and extended lien

1. Our delivery takes place exclusively under reservation of proprietary rights. Ownership shall not pass to the buyer until he has settled all his liabilities arising from our business relations. This also includes any ancillary claims and claims for damages. Even if the purchase price for certain designated deliveries of goods paid for by the Buyer. In the event of conduct in breach of contract on the part of the Buyer, in particular in the event of default in payment, we shall be entitled to retrieve the object of sale. The retrieval of the object of sale by us shall constitute a withdrawal from the contract. After retrieving the object of sale, we shall be entitled to utilise it; the proceeds of utilisation shall be set off against the liabilities of the buyer - minus reasonable utilisation costs. The Buyer shall bear any transport costs incurred. In the event of seizures or other interventions by third parties, the customer must inform us immediately in writing so that we can take legal action in accordance with § 771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of an action in accordance with § 771 German Code of Civil Procedure (ZPO), the customer shall be liable to us for the loss incurred by us.

2. In the case of a current account, the reserved property shall serve as security for our balance claim. The processing or treatment of goods delivered by us which are still our property shall always be carried out on our behalf, without any liabilities arising for us from this. If the goods delivered by us are mixed or combined with other objects, the buyer hereby assigns to us his ownership or co-ownership rights to the mixed stock or the new object and shall keep it in safe custody for us with due commercial care. The buyer is entitled to sell or use the delivered goods in the ordinary course of business as long as he is not in default of payment. The pledging or transfer of ownership by way of security is prohibited. The buyer must notify us immediately of any seizure or any other impairment of our rights by third parties so that we can enforce our property rights. Insofar as the third party is not in a position to reimburse us for the judicial or extra-judicial costs incurred in this connection, the buyer shall be liable for these. 3. If the Buyer sells the goods delivered by us - irrespective of their condition or alone or together with other goods - he hereby assigns to us all claims against his customers arising from the sale including all ancillary rights until all our claims have been settled in full. At our request, the Buyer shall be obliged to notify the sub-customers of the assignment and to provide us with the information and hand over the documents required to assert our rights against the sub-customers. He cannot make any contractual agreements with his customer that restrict our rights. If the value of the security given to us exceeds our delivery claims by more than 10% in total, we are obliged to reassign the security at the Buyer's request. The buyer is authorised to collect the assigned claims. However, we are entitled to revoke this authorisation at any time.

4. We are entitled to a contractual lien on the subject matter of the order due to a claim arising from the order. We ourselves are entitled to sell the pledged goods in our possession on the open market. If we make use of our right of lien sale, a written notification to the last address of the customer known to us shall suffice for the lien sale threat, insofar as a possible new address cannot be determined by information at the residents' registration office.

VIII. Terms of payment

1. Unless otherwise stated in the sales agreement, our prices are "ex works". The packaging, freight and customs costs are not included in the price. These will be invoiced separately. The statutory value added tax is not included in our prices and will be shown separately in the invoice at the statutory rate on the day of invoicing.

2. For an order value of up to € 10,000, the amount is due net within 30 days of invoicing.

3. For an order value of € 10,000 or more, the following is due: 1/3 down payment of the net price on the day of order, 2/3 after delivery or notification that the item is

ready for dispatch. Repair or contract work shall always be payable immediately net cash. Cheques and acceptances are accepted on account of payment, the latter only on the basis of special agreements. Costs of bills of exchange and discount charges according to the rates of the banks shall be borne by the buyer. The Buyer may only assert a right of retention if it is based on the same contractual relationship. He is only entitled to a set-off if we have acknowledged the counterclaim or it has been legally established. The Buyer is not entitled to assign claims arising from the purchase contract without the consent of the Seller.

4. If the Buyer is in default with a payment due to his own fault, all payment obligations arising from the business relationship with us - including those for which bills of exchange have been given - shall become due immediately. In this case, we shall be entitled to charge interest at the statutory rate from the relevant date. The Seller reserves the right to prove higher damages. The same applies to deferred liabilities in the event of default on the part of the Buyer.

5. If, after conclusion of the contract, we become aware of circumstances which indicate a significant deterioration in the financial circumstances of the Buyer, we may demand advance payments in an appropriate amount or withdraw from the contract.

IX. Place of jurisdiction/Place of performance/Choice of law

1. The place of performance and exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Beckum / or Münster, Germany, insofar as the customer is a merchant within the meaning of the German Commercial Code. However, we are also entitled to file claims against the buyer at his/her place of general jurisdiction. The same shall apply if the customer does not have a general place of jurisdiction in Germany, if the customer has moved his place of residence or habitual abode abroad after conclusion of the contract or if this place of residence or habitual abode is unknown at the time the action is brought.

2. The relations between the parties shall be governed exclusively by the law applicable in the Federal Republic of Germany. The validity of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

X. Legal validity

Should any provision be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. Rather, the obligation exists to replace the invalid or unenforceable provision with a valid or enforceable provision that corresponds as closely as possible to the economic and ideal provisions.