

# Terms and conditions of BURG F. W. Lüling KG

## Section 1 Scope of application

(1) The following T&Cs shall apply exclusively to business transactions with companies pursuant to Section 14 German Civil Code, legal entities subject to public law and special assets governed by public law.

(2) They shall not apply to orders placed through our online shop.

## Section 2 Applicable law

(1) The applicable statutory law of the European Union and the Federal Republic of Germany shall always take precedence.

(2) All disputes arising from contracts concluded with us under discretionary law shall be subject first to any individual agreements, then to the following terms and conditions, and finally to the discretionary law applicable in the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

## Section 3 Contract language

(1) Contract language is German.

(2) This shall apply irrespective of any negotiations or correspondence conducted in another language or if the contract is laid down in another language in writing or in text form.

## Section 4 Deviating T&Cs of the contractual partner

Deviating T&Cs of the contractual partner shall apply only with our express consent and as part of an individual agreement.

## Section 5 Contract conclusion / commercial confirmation letter

(1) Illustrations of our products in any advertising materials, even in conjunction with price information, shall not constitute an offer, but rather a request from our customer to provide an offer. A contract shall only materialise upon our acceptance of a customer order. Acceptance is normally by way of a written order acceptance. The customer shall be bound to any order for 14 calendar days.

(2) Our acceptance of a customer order shall establish a binding contract for both parties. Cancellation is no longer be possible.

(3) The absence of a response on our part to any commercial confirmation letter of the contractual partner or negotiation partner shall constitute neither a contract conclusion nor an amendment to a concluded contract. Amendments to a concluded contract shall always require our express approval.

## Section 6 Preparatory stages to a contract

If, upon request, we produce a sample workpiece in preparation for a contract or for the purpose of contract performance, we shall be entitled to request the customary payment for this unless expressly agreed otherwise in advance.

## Section 7 Prices

(1) In the absence of an individual price agreement our price lists applicable at the time of contract conclusion shall apply insofar as the contractual partner was notified of these prior to or upon contract conclusion or these were published on our website.

(2) Our prices are net and ex works. Prices exclude statutory VAT and shipping.

(3) A discount shall be granted only by prior agreement.

## Section 8 Subject to price adjustment

(1) If the goods are contractually scheduled for delivery more than 4 months after our order confirmation date, we shall be entitled to adjust the prices if the price index of the producer prices for commercial products, provided by the German Federal Statistics Office, increases by more than 2 percent between the order confirmation date and the delivery date.

(2) The adjustment shall be made at our reasonable discretion. It may correspond to the percentage of the index increase, however an increase may not exceed 5 %.

## Section 9 Delivery location and lead times

(1) The delivery obligation must be satisfied ex works, unless agreed otherwise.

(2) Lead times require express agreement. Should a third party delivery be scheduled for a specific date, in the absence of another individual agreement the lead time shall be deemed met upon timely transfer of the consignment to the forwarder/carrier 3 working days prior to the desired delivery date of the third party. Should the contractual partner agree that the consignment should be transferred to the forwarder/carrier by a deadline less than 3 days prior to the delivery date, the delivery shall be deemed timely if we supply the consignment to the forwarder/carrier by this deadline.

(3) The lead time agreed with us shall be binding only if the contractual partner has also met its obligations to cooperate by the agreed deadline, insofar as its obligations to cooperate constitute an organisational prerequisite for the timely fulfilment of our performance obligation.

## Section 10 Subject to self-supply

(1) In the event of a supply failure by one of our suppliers, which renders timely delivery to our customers infeasible, our delivery obligation shall lapse.

(2) In this case we shall not be liable for damages. Payments already made shall be reimbursed immediately.

## Section 11 Due date for consideration/pre-payment for electronic locking systems

(1) Unless agreed otherwise our receivables shall be due for payment immediately.

(2) For orders of electronic locking systems or tools the customer shall pay 50 % of the total sum in advance upon receipt of the order confirmation.

## Section 12 Transfer of risk

If the goods are to be shipped to the contractual partner or to a third party at its request, the risk of deterioration and accidental loss shall be transferred to the contractual partner as soon as we have transferred the consignment to the forwarder, carrier or other person or institution charged with the execution of the shipment for distribution. This shall apply irrespective of who pays the shipping costs.

## Section 13 Obligations to inspect and notify of defects

(1) In accordance with these T&Cs the obligations to inspect and notify of defects pursuant to Section 377 German Commercial Code shall also apply to entrepreneurs who are not merchants, as well as legal entities subject to public law and special assets governed by public law. In accordance with these T&Cs the obligations shall not apply to small-scale entrepreneurs pursuant to Section 19 German VAT Act.

(2) The contractual partner must inspect the goods immediately after shipment pursuant to Section 12, insofar as possible during the normal course of business. If the individual circumstances only permit random inspections and a defect is identified during a random inspection, the contractual partner must inspect the entire delivery.

(2) The contractual partner must notify us immediately in the event of a defect. Should the contractual partner fail to notify us, the goods shall be deemed approved unless the defect was undetectable. Should such a defect be discovered at a later date, we must be notified immediately upon discovery; otherwise the goods shall be deemed approved even with this defect.

(3) Notwithstanding Section 377 German Commercial Code, complaints shall not be accepted unless submitted in writing. Also notwithstanding Section 377 German Commercial Code, our receipt of the complaint shall be decisive for the timeliness of the complaint.

## Section 14 Exclusion of offsetting

The offsetting of counterclaims shall be permitted only if these are uncontested, legally established or where a judgement is anticipated presently at the time the offsetting was declaration.

## Section 15 Industrial property rights of third parties

(1) If a piece is to be produced according to the specifications of the contractual partner, the contractual partner shall absolve us of any third-party claims and all necessary costs, which should arise particularly from the breach of industrial property rights of third parties, particularly the breach of patents and utility models of third parties or related property rights, due exclusively to the performance of the contract.

(2) These shall also include our necessary legal costs at the statutory rate.

## Section 16 Retention of title

(1) We shall retain ownership of the delivered goods until full payment of the agreed remuneration. They may be neither attached nor pledged as collateral. The contractual partner shall be entitled and authorised to resell the goods only subject to the condition that the purchase price claim from the resale is assigned to us.

(2) The contractual partner shall hereby assign to us its receivables from the re-sale of the goods to its customer. We hereby accept this assignment. The contractual partner shall hereby grant us a right of lien on all supplied goods effective from transfer of risk pursuant to Section 12 of these T&Cs.

## Section 17 Claims for defects and liability

(1) Defects involving part of the delivered goods shall not give rise to a right to reject the entire delivery unless the partial delivery is no longer of interest to the contractual partner.

(2) We shall be liable without limitation, pursuant to the legal provisions, for injury to life, limb or health, where a warranty is granted for the quality of the goods and for damages pursuant to the German Product Liability Act.

(3) We shall also be liable without limitation, pursuant to the legal provisions, in all cases of wilful intent and gross negligence, as well as fraudulent concealment of a defect.

(4) Where cases (2) and (3) do not apply, our liability shall be limited to the typical foreseeable damages occurring in the event of a breach of fundamental contractual duties and ordinary negligence. Fundamental contractual duties are duties whose breach would endanger the achievement of the contractual purpose, whose fulfilment allows the proper execution of the contract and with which the contractual partner may routinely expect compliance.

(5) Where cases (2) and (3) do not apply, the liability for ordinary negligent breach of duties shall be excluded for any breach of minor contractual duties.

(6) The statute of limitations for claims for defects shall be one year from the receipt of goods. This shall not apply in cases (2) and (3), or to claims for damages, including any claims for damages due to non-fulfilment of claims for defects. Furthermore it shall not apply to supplied goods that have been used for a building in accordance with their customary use, which thus caused the defect. The statutory statute of limitations shall apply in this case.

(7) If the contract governs the purchase of used goods and cases (2) and (3) do not apply, any liability for defects shall be excluded.

## Section 18 Place of jurisdiction and place of performance

If the contractual partner is a merchant, a legal entity subject to public law or a special asset governed by public law, Wetter in North Rhine-Westphalia shall be the place of jurisdiction for all disputes arising from contracts concluded with us that are subject to these T&Cs, and shall be the place of performance for all reciprocal claims from such contracts.

## Section 19 Severability clause

Should one of these provisions be invalid, this shall not affect the validity of the remaining provisions. An invalid provision may be retained if its content would remain meaningful by simply deleting the ineffective section.