

General Terms and Conditions of Purchase for Brinkmann Pumpen K. H. Brinkmann GmbH & Co. KG

1. Sphere of validity

- 1.1 We only enter into contracts in accordance with our T&Cs in force at that time. Our T&Cs will not apply for contracts with end customers. Once they have been received by suppliers they shall apply for all subsequent transactions in an on-going business relationship. New versions of our T&Cs shall apply after the Supplier has received written notification of amendments.
- 1.2 If the Supplier has terms of business which differ from ours or which are unilateral, they shall not place us under an obligation, even if we do not explicitly object to them or accept his performances notwithstanding, unless we have explicitly agreed in writing that they shall apply in a given instance.

2. Concluding a contract, Written form

- 2.1 Our order shall not be regarded as being binding before it has been sent or confirmed in writing. It shall define the scope of the contract. The Supplier has to point out manifest defects and shortages in the order including those in order documents prior to us taking delivery of the goods. Following receipt of our order letter, the Supplier must request missing tools, models, drawings and other documents in writing with the order confirmation at the latest.
- 2.2 The Supplier shall be obliged to confirm our order in writing within five days or in particular by carrying it out by sending the goods without reservation.
- 2.3 The preparation of offers and working out projects by the Supplier for us shall not place us under any obligation and will be free of charge.
- 2.4 Legally-relevant statements and notices handed in to us by the Supplier after the contract has been signed must be in writing to be legally effective.

3. Prices, Payments, Offsetting, Assignment

- 3.1 The price shown in the order is binding. Prices can not be increased after an order has been placed and before goods have been delivered. Should the Supplier reduce his prices between the placement of the order and the delivery of the goods, and his terms and conditions improve for the benefit of the Buyer, they shall apply.
- 3.2 The price stated in the order shall be regarded as Free Vierte or Free Stores and includes packing, freight, postage, stable value clause, insurance of the goods and transit insurance plus value added tax, and also customs duty for consignments supplied to us in Germany from other countries.
- 3.3 We shall pay the net invoiced amount within 14 days from the receipt of invoice and receipt of all the goods to qualify for a prompt payment discount of 3% or within 30 days net.
- 3.4 The receipt of a remittance instruction by our bank when sufficient funds are in our account shall satisfy the requirement for us to pay invoices on time.
- 3.5 The currency conversion rate shall be based upon the official asking rate set in Frankfurt on the invoice date.
- 3.6 We shall be entitled to offsetting rights and rights of retention as provided for by law. The same shall apply for raising objections. The Supplier shall only be entitled to offset claims or assert rights of retention on account of counterclaims declared final and absolute in a court of law or if they are not contested by us.
- 3.7 Assignments of our liabilities to third parties are only allowed with our written consent.

4. Delivery period, Fixed dates, Interest, Sub-contractors

- 4.1 The delivery period stated in the order is binding and is a fixed date within the meaning of Section 376 of the German Commercial Code [HGB]. The Supplier has to ensure that he has sufficient materials and spare parts in his store to satisfy his contractual obligations at all times.
- 4.2 The Supplier is obliged to notify us in writing without delay if he becomes aware of circumstances under which the contracted delivery period cannot be met.
- 4.3 In the event of delay we shall be entitled to statutory claims. In particular, we shall be entitled, after a reasonable period of time has expired unsuccessfully, to claim compensation for damages instead of performance and to withdraw from the contract. If we demand compensation for damages, the Supplier shall be entitled to prove to us that he was not responsible for the delay in delivery.
- 4.4 If we take delivery of late consignments this shall not constitute a waiver of our claims.
- 4.5 We shall not owe any interest from the date on which payment is due onwards. Claims to default interest amounting to no more than 5 percentage points above the respective base rate shall not be affected by this. We shall not be in default unless we are sent a written payment reminder.
- 4.6 The Supplier shall have the work carried out by his own qualified staff. Work may also be carried out by third parties (sub-contractors) subject to our prior written consent.

5. Packing, Dispatch, Price-risk and Performance-risk

- 5.1 Packing must be compatible with fork-lift operations and stacking (up to a max height of 1.10 m) and is to be free of charge. The Supplier must take it back free of charge at our request. Pallets and containers are to be taken back by the Supplier free of charge, and by means of exchange for follow-up deliveries.
- 5.2 At our request the Supplier shall have to hand over certificates for the packing materials used.
- 5.3 Shipment and dispatch shall be carried out at the Supplier's risk.
- 5.4 The Supplier shall have to send out a completed notice of dispatch for each consignment on the date of dispatch. This must be sent separately from the goods and invoice. Delivery notes are to be attached to consignments. They are to include the date (on which the delivery note is raised and sent out), contents of the consignment, (item number and quantity) our order (date and number), the customs duty number as well as the country of origin required by commercial law, and packing note. If a consignment is to be sent by ship, the name of the ship and shipping company are to be stated in the shipping papers and invoice. The Supplier has to select the cheapest and most suitable method of transport for us. The order references and information on the place of unloading are to be stated in full on all dispatch advices, delivery notes, packing lists, waybills and invoice notes.
- 5.5 As a matter of principle the Supplier has to pack, mark and send hazardous products in accordance with the national and international regulations. In addition to the hazard category, the accompanying paperwork must include the information specified by the respective transportation regulations.
- 5.6 The Supplier shall be liable for damage and shall bear the costs incurred through non-compliance with the above numbers 5.1 to 5.5. He shall also be responsible for compliance with these dispatch regulations by his sub-contractors. We are unable to take delivery of any consignment failing to comply with the regulations in 5.1 to 5.5, and they shall be put into store at the cost and risk of the Supplier. We shall be entitled to ascertain the content and condition of such consignments.
- 5.7 Tools and scaffolding must not be loaded together with items to be delivered.
- 5.8 In so far as it has been agreed that an acceptance test is to be carried out, risk shall only pass over to us after the acceptance test has been passed.

6. Goods in breach of contract

- 6.1 The Supplier shall furnish a warranty that the item to be supplied does not have any defects detrimental to its fitness for use or value, and that it has the agreed quality and condition that it is suitable for the use intended in the contract, and that it is in compliance with the recognised guiding rules of technology as well as REACH and RoHS, the latest official regulations, the appliance and product safety act and the technical safety requirements as may from time to time be published and the safety at work and accident prevention regulations. Evidence of preferential countries of origin is to be submitted.
- 6.2 Our obligation to inspect incoming goods shall be limited to looking for defects, which come to light in the course of our external appraisal of goods during a goods inwards check, including the shipping paperwork plus random checks conducted by our quality control department. E.g. transport damage, incorrect goods delivered as well as quantity shortages). Provided that it has been agreed that an acceptance test is to be conducted, we shall not be under any obligation to check incoming goods. Moreover, what counts is the extent to which an inspection taking into account the circumstances of a specific case is expedient given the proper course of business. Our complaint will have been made on time provided that it is received by the Supplier within a period of 8 working days counting from receipt of all the goods, or in the event of concealed defects, within 8 working days of discovery.
- 6.3 We shall be entitled to all statutory claims under warranty. If the Supplier fails to fulfil his obligation to render subsequent fulfilment – as we choose either by rectifying the defect (repair) or by supplying a fault-free thing (Replacement) unless the Supplier is able to prove that the subsequent fulfilment option selected by us would incur disproportionately high costs and that we would not suffer considerable disadvantages as a result of the other option for subsequent fulfilment - within a reasonable period of time set by us, – we may rectify the defect ourselves and demand compensation from the Supplier for the expenditure we incur as a result irrespective of our other rights.
- 6.4 Notwithstanding Section 442 Para 1 P. 2 of the German Civil Code [BGB], we shall also be entitled to unlimited warranty claims if we were still unaware of the defect when the contract was signed as a result of gross negligence on the Supplier's part.

6.5 In the event that there is a series defect, the Supplier shall be obliged to inspect all products of the same type at his own expense – including products which may possibly be affected by a series defect – without delay. If the Supplier does not comply with our written request to inspect the products within a reasonable period of time he has been set to do so at the latest, we shall be entitled to withdraw from all deliveries in the pipeline which could be affected by the series defect, regardless of our other rights. A series defect will be extant if the same or comparable defects appear on 5% of the products concerned, in particular as a result of defective development, or series manufacture as well as the result of material defects.

6.6 The period of limitation for claims under warranty is 36 months counting from the passing of risk, unless compulsory provisions of Section 437 in conjunction with Section 445a and Section 445b of the German Civil Code [BGB] apply, or the Supplier grants a longer period of limitation.

6.7 The warranty period shall begin again from the beginning for repaired or replaced products

7. Liability

- 7.1 The Supplier's rights to assert compensation claims for damages, regardless of whatever legal reason upon which they may be based, as well as claims for the reimbursement for expenditure spent in vain shall not be admitted unless the cause of the damage is based upon gross negligence or intentional breach of duty or at least a negligent breach of a contractual duty by Brinkmann Pumps, and such a breach jeopardises the contractual objective being achieved (cardinal contractual duty). In the latter case our liability shall be limited in amount to damage which is typically foreseeable.
- 7.2 The above limitation of liability in accordance with Number 7.1 shall also apply for the personal liability of our employees, representatives, and executive bodies as well as for our assistants.
- 7.3 The limitations of liability under Numbers 7.1 and 7.2 above shall not apply for personal injury, that is, loss of life, personal injury or physical harm, for liability in accordance with the German Product Liability Act or in so far as we have, by way of exception, furnished a warranty.

8. Period of limitation

- 8.1 The Supplier's claims, in particular compensation claims for damages and claims for the reimbursement of expenditure spent in vain, shall lapse after 24 months, unless the law specifies a shorter period of limitation.
- 8.2 The above period of limitation in Number 8.1 shall not apply in the event of a grossly negligent or intentional breach of duty or a breach of a contractual duty which jeopardises the contractual objective from being achieved (Cardinal contractual duty) as well as in the cases named in Number 7.3. In these cases the statutory periods of limitation shall apply.

9. Proprietary rights

- 9.1 The Supplier shall guarantee that no third party rights shall be breached within the Federal Republic of Germany in connection with his delivery.
- 9.2 If a third party asserts a claim against us on account of this, the Supplier shall be obliged to exempt us in writing at first call from such asserted claims. We shall not be entitled to enter into agreements with the third party consequently, and in particular to reach a settlement with him, without the Supplier's consent. The Supplier's obligation to exempt us shall refer to all expenditure we are forced to incur as a result of, or in connection with, a third party asserting a claim against us.

10. Product liability, Exemption, Liability insurance

- 10.1 In so far as the Supplier is liable for product damage, he is obliged to exempt us from third party compensation claims for damages in writing at first call.
- 10.2 As part of this liability for claims, the Supplier shall also be obliged, irrespective of other expenditure, in accordance with Sections, 683, 670 of the German Civil Code [BGB] or Sections 830, 840, and 423 BGB, to reimburse damages incurred from, or in connection with, a recall campaign carried out by us. We shall – as far as possible and reasonable – inform the Supplier of the content and scope of the recall measures to be undertaken and afford him an opportunity to respond.
- 10.3 The Supplier shall undertake to maintain a product liability insurance providing lump sum cover of € 10,000,000.00 per claim for personal injury or property damage for the duration of this contract, i.e. until the period covered by warranty expires. The Supplier shall assign to us here and now the entire compensation claim under this insurance policy created on the basis of the product damage. We hereby accept the assignment. Evidence of the insurance policy must be submitted to us at first call at any time by forwarding us written confirmation from the insurer.

11. Furnishing materials, Tools, Right of use, Non-disclosure

- 11.1 Processing or conversion of the parts furnished by us (goods subject to retention of title) by the Supplier shall be carried out on our behalf. If our goods subject to retention of title are processed together with other items not belonging to us, we shall acquire co-ownership of the new thing in proportion to the value of our thing (Purchase price plus value added tax) to the other processed items at the point in time of processing. If the thing furnished by us is indivisibly combined with things not belonging to us, we shall consequently acquire co-ownership to the new thing in proportion to the value of the goods subject to retention of title (Purchase price plus value added tax) to the other combined items at the point in time of combination. If the items are combined in such a way so that the Supplier's thing is to be regarded as the main thing, it shall consequently be regarded as agreed that the Supplier assigns co-ownership to us on a proportional basis. The Supplier shall keep the sole ownership or co-ownership in safe keeping for us.
- 11.2 We reserve title rights and copyrights to diagrams, drawings, calculations, moulds and models, tools and other documents. Third parties must not be allowed access to them without our express written consent. They are only to be used for production purposes based on our orders. After handling our orders you will be obliged to return them to us without having to be asked to do so. They are to be kept secret from third parties. The Supplier shall be obliged to insure each of the tools, moulds and models at the value of replacement with new products at normal prices at his own expense against fire and water damage and theft. He shall assign all compensation claims to us under this insurance policy to us now. We hereby accept the assignment. The Supplier shall be obliged to carry out any servicing and inspection work which may be necessary for our tools as well as maintenance and repair work at his own expense and in good time. Marks on our tools pointing out that the tools are our property must not be modified and are to be maintained by the Supplier at his own expense. The Supplier must notify us in writing immediately of breakdowns.
- 11.3 Moulds, models, tools, films, drawings etc which have been manufactured by the Supplier to carry out the order shall become our property when we pay for them, even if they remain in the possession of the Supplier. They are to be marked by the Supplier as our property.
- 11.4 Diagrams, drawings, calculations, moulds, models, tools and other documents are to be returned to us in perfect condition upon request, and no later than when the final consignment is delivered.
- 11.5 During the normal service life we shall have a non-exclusive, transferable and free right of use to the products. The Supplier shall retain patent rights and other intangible rights of ownership.
- 11.6 The Supplier shall be obliged to keep all the diagrams, drawings, calculations tools and other documents and information he receives strictly secret. They may only be disclosed to third parties with our express written consent. The obligation to keep such materials secret shall continue to exist after the end of this contract. It shall lapse when and provided that the production knowledge in the diagrams, drawings, calculations, tools and other documents has entered the public domain. We shall be entitled to withdraw from all contracts being processed and to demand compensation for damages if it is handed over to third parties or used by them without our authorisation.

12. Exclusion of reservation of title

No forms of extended reservation of title will be admitted.

13. Place of jurisdiction, Place of fulfilment, Choice of law, References

- 13.1 If the Supplier is a registered business, our place of jurisdiction shall be the courts located where our company is based. We are however entitled to take legal action against the Supplier at the courts having jurisdiction where his company is based as well.
- 13.2 Unless an order states otherwise, our place of business shall be the place of fulfilment.
- 13.3 The law of the Federal Republic of Germany shall apply. The agreement of the United Nations dated 11 April 1980 on the international sale of goods (CISG- Vienna Sales Convention) shall not apply.
- 13.4 The Supplier may only refer to our business relationship to third parties, for advertising purposes in particular, with our written consent.

14. Partial validity clause

If individual provisions in these terms and conditions or in the delivery transaction are, or become, partially or completely invalid, the validity of the remaining provisions or remaining parts of such clauses shall not be affected as a result.