

# General Terms and Conditions of Sale and Delivery of Brinkmann Pumpen K.H. Brinkmann GmbH & Co. KG



## 1. Scope of application

1.1 We conclude contracts exclusively on the basis of our **GTC valid at the time**. Our GTC **do not apply to consumers**. Our **GTC apply** from the time the customer has first received them, and that for **all transactions** henceforth concluded in the context of routine business operations. Revised or amended versions of these GTC apply from the time of our written notification of the revision or amendment.

1.2 Unless explicitly approved by us in writing in the specific individual case, we are not bound by conflicting, deviating or unilateral **conditions of business of the customer** even if we do not explicitly reject them and even if we provide or accept services without reservation regardless of such conditions of the customer.

## 2. Conclusion of contract

2.1 If the customer makes an **offer** for conclusion of a contract with us, the contract is only deemed consummated upon receipt of our acknowledgement of the order or, in default of such order acknowledgement, upon receipt of our invoice at the latest or upon delivery to the customer if such delivery takes place earlier. If requested by the customer in writing, the order acknowledgement will be issued in writing. Our order acknowledgement resp. invoice is solely decisive and binding as regards the **scope and contents of the contract**.

2.2 The customer is **bound to his offer** for a period of **4 weeks** from receipt of the offer by us.

2.3 Where the customer places an order on the basis of a previous **offer issued by us**, the contract is deemed consummated with the placement of the order already. If the customer order deviates from our offer, the contract is only deemed consummated upon our acknowledgement of the order. If our **offer was designated as "non-binding" or "subject to change"**, we may revoke the offer at our discretion at any time until receipt of the customer's order. If requested by us, the customer is to place the order in writing.

## 3. Prices, payment

3.1 Unless otherwise agreed, our **prices** are ex works or ex warehouse and exclusive of packaging, freight, postage, value guarantee and transport insurance. Value-added tax is to be paid in addition. If delivery to a destination abroad was agreed, customs clearance and customs duties are at the customer's expense. Cash discount, rebates or bonuses are only allowed if specifically agreed in writing.

3.2 Our claims are **due** upon receipt of our notice of readiness of the goods for collection or, where delivery to the customer was agreed, upon delivery, unless the parties have agreed a later date for payment in writing.

3.3 **Payment** is to be made in EUROS without deduction and at no charge or expense to us to the bank designated by us. **Periods allowed for payment or cash discount deduction** run from the invoice date. The customer may only deduct cash discounts as agreed if he is not in default of payment of any other claims from our business relationship. Payment is deemed effected in due time if the money transfer order is timeously received by the customer's bank with the customer's account showing sufficient cover.

3.4 We reserve the right to use incoming payments for satisfaction of the oldest invoice claims due including accrued interest and costs, in the following sequence of order: costs, interest, principal claim.

3.5 The customer is deemed to be in **default** if he has failed to effect payment within two days from receipt of our notice of readiness of the goods for collection at the latest or, where delivery to the customer was specifically agreed, within two days from such delivery at the latest, unless he has received our invoice before or the agreed payment deadline has already expired before. In such cases, the customer is already deemed to be in default if he fails to effect payment within one day from receipt of the invoice at the latest resp. on the agreed payment date. In the case of default, we first charge, as far as commercial business is concerned, **interest payable from the due date** (sec. 3.2) in the amount of 5 percentage points p.a. and, from the occurrence of default, **default interest** in the amount of 8 percentage points p.a. above the base interest rate valid at the time.

3.6 Payment periods allowed by us are deemed forfeited if we become aware of a **substantial worsening of the customer's financial situation** or if the customer has furnished **incorrect or incomplete information** about his creditworthiness. In such cases, outstanding debts are deemed to be due for immediate payment to the extent that the customer has no right to refuse payment ("Leistungsverweigerungsrecht"). We may further enforce any security interest provided to us and make outstanding deliveries dependent on the provision of adequate security or advance payment. If the customer refuses to provide security or advance payment, we may withdraw from the contract to the extent that we have not yet fulfilled our contractual obligations, without the customer being entitled to assert claims on such grounds.

3.7 **Bills of exchange and cheques** are only accepted if specifically agreed with the customer and they are accepted on account of settlement only ("Erfüllungshalber" – which means that the debt is not deemed settled already upon hand-over of the cheque or bill but only after the outstanding amount has actually been credited to us). Bills of exchange must be discountable. Bill and discount charges are at the customer's expense; such charges are calculated from the due date of the invoice amount and are payable immediately. The term of a bill of exchange must not exceed 90 days from the invoice date.

3.8 The customer may only **set** his own claims **off** against our claims if the customer's counterclaim is undisputed or has been established by a final non-appealable court decision (res judicata) or is ready for decision, i.e. the facts which are relevant for the counterclaim have been sufficiently clarified and all relevant evidence has been taken ("Entscheidungsreife"). The same applies to the assertion of **any right to refuse performance as well as any right of retention**. Moreover, the customer may only assert a right of retention if it is based on the same contractual relationship from which his obligation arises and can assert such a right of retention only if we have failed to provide adequate security despite an appropriate written request by the customer.

## 4. Delivery / Risk allocation

Delivery and shipment are ex works, without packing and **at the customer's risk**. After passing of the risk, we are no longer liable for loss or perishing of or damage to the goods. Extra costs incurred as a result of the customer's request for special shipment are at the customer's expense.

## 5. Delivery time

5.1 **Fixed delivery dates** must be confirmed by us in writing. In the event of a **delay in delivery** which is due to industrial action or extraordinary unforeseeable events such as governmental action, traffic disturbance or the like we are released from the obligation to deliver for the duration of such events and, where delivery is rendered impossible, we are completely released from our obligation to deliver if and to the extent that we are not responsible for such disturbance.

5.2 Any **grace period** to be granted to us must be at least 4 weeks.

5.3 If and to the extent that we are unable to deliver because we do not receive any deliveries from our own suppliers even though we have entered into **congruent covering transactions**, we will be released from our obligation to duly perform under the contract and we will be free to withdraw from the contract. We will advise the customer to that effect without undue delay ("unverzüglich"). We will return to the customer without undue delay ("unverzüglich") any payments already made by him. In such a case, the customer is not entitled to any further claims going beyond the aforesaid.

## 6. Return of goods

Returned goods will only be accepted following **written announcement** and **prior acknowledgement of acceptance** by us. Return shipments are **at the customer's risk and expense** unless the goods returned are defective.

## 7. Defective goods

7.1 If the delivered goods are **defective**, the customer may only claim remedy of the defect ("Nachbesserung"). Substitute delivery ("Nachlieferung") is excluded because it is usually associated with unreasonable costs and no substantial disadvantage to the customer results from such exclusion of substitute delivery. However, we may, at our choice, also deliver non-defective goods.

7.2 If such subsequent satisfaction ("Nacherfüllung") fails or does not take place within an adequate period fixed by the customer, the customer may **withdraw** from the contract or **reduce the purchase price**. The customer may only claim compensation of damages on the conditions set out in sec. 8.

7.3 If the customer, having complained about a defect and having fixed a period for subsequent satisfaction which has expired without result, fails to make clear which of the rights stipulated in sec. 7.1 and sec. 7.2 he claims, we may fix a 3-week **period** in writing within which the customer must make clear which of the aforesaid rights he opts for. If such period has expired without result, the right to opt for either of the said rights is transferred to us.

7.4 The **statutory inspection and complaint obligations** under § 377 HGB (German Commercial Code) apply. Approval of initial samples by the customer does not release him from, or restrict his obligation to inspect the goods and give notice of defect, if any.

7.5 The **warranty period** is 24 months. For ex works delivery (EXW), such period runs from the collection day advised in our notice of readiness of the goods for collection, or otherwise from delivery of the goods to our customer.

7.6 Wear and tear of **wear and tear parts** which is due to operational use does not constitute a defect and thus does not give rise to warranty claims of the customer. The same applies to defects which are due to any **unsuitable or improper use**, defective installation, assembly or commissioning of the delivered goods by the customer, including but not limited to any case of non-compliance with our installation and commissioning instructions or any other incorrect treatment, inappropriate operating material, substitute material or other inappropriate framework conditions.

## 8. Liability

8.1 If the customer is at fault of non-acceptance of the purchased goods, we may claim a **compensation for non-acceptance** in the amount of 20% of the purchase price; we reserve the right to claim further damages. The customer may however present evidence to prove that we have incurred less damage only.

8.2 **Claims of the customer for compensation of damages**, regardless of the legal cause, as well as claims for reimbursement of futile expenses are excluded unless the damage is caused either by a grossly negligent or inten-

tional breach of duty or by an at least negligent breach of a contractual duty the fulfillment of which is of fundamental importance for the contract and on the fulfillment of which the customer is allowed to rely (fundamental contractual duty - "wesentliche Vertragspflicht"); in the latter case, the liability is limited to the amount of such damage as is foreseeable upon contract conclusion and typically occurs with contracts of the kind in question ("vorhersehbarer vertragstypischer Schaden").

8.3 The limitation of liability under the preceding sec. 8.2 also applies to the personal liability of our employees, representatives, agents, executive bodies ("Organe") and vicarious agents or other persons engaged by us in the performance of our obligations ("Erfüllungsgehilfen").

8.4 **The limitation of liability under sections 8.2 and 8.3 does not apply in the case of personal injury**, i.e. in the case of damage resulting from an injury of the life or limb or health, in the case of liability under the "Produkthaftungsgesetz" (German Product Liability Act) and in cases where we have, by way of exception, given a guarantee.

## 9. Statute of limitations

9.1 Our payment claims and claims for interest become **time-barred after five years** unless a longer period is prescribed by law. The limitation period runs from the end of the year in which our claim has come into existence and we have become aware of the facts giving rise to the claim.

9.2 Notwithstanding § 195 BGB (German Civil Code), the **general limitation period** which runs from the time of the customer's awareness of the facts giving rise to the claim is **24 months**. The limitation periods runs from the end of the year in which the customer's claim has come into existence and the customer has become aware of the facts giving rise to the claim.

9.3 Notwithstanding sec. 9.2, contractual claims for compensation of damages and claims for reimbursement of expenses of the customer which are based on a **defect** of the goods as well as the customer's right to claim subsequent performance ("Nacherfüllung") become time-barred after 24 months (see sec. 7.5). Recourse claims under § 478 et seq. BGB (German Civil Code) remain unaffected.

9.4 Sec. 9.2 does not apply in the case of an **intentional or grossly negligent** breach of duty or a breach of **fundamental contractual duties** nor in the cases specified in sec. 8.4; in these cases, the statutory limitation periods apply.

## 10. Retention of title

10.1 **We retain title** to the delivered goods ("goods delivered subject to retention of title") until our claims against the customer have been satisfied in full ("secured claims") and all cheques and bills of exchange have been honoured. "Secured claims" means all present and future claims arising from the business relationship with the customer, including any claims for current account balances.

10.2 The customer is obliged to **carefully keep the goods subject to retention of title in custody** for us, to maintain and repair them at his own expense and take out a new value insurance for these goods against theft, loss and damage as is usual with a diligent businessman and to evidence such insurance to us without undue delay ("unverzüglich") upon our request by submission of a written confirmation of the insurer. The customer hereby assigns to us all of his future claims, if any, for appropriate insurance benefits and indemnification payments. We hereby accept the assignment.

10.3 Any processing of the goods subject to retention of title is deemed to be undertaken for us. We become the owner of the new item. Any **processing, mixing or combination** of the goods subject to retention of title with other goods is also deemed to be undertaken for us. We will **share title to, and become co-owner of** the so generated new item in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods. In case the goods subject to retention of title are combined or mixed with a main item which does not belong to us, the customer already hereby assigns to us his rights to the main item. We hereby accept the assignment. New items and main items in terms of this sec. 10.3 are also deemed to constitute goods subject to retention of title.

10.4 The customer may **dispose** of the goods subject to retention of title in the **ordinary course of business** provided that and as long as he is not in default of payment. This does not apply if and to the extent that the customer and his purchasers have agreed on a prohibition of assignment of the customer's claim for payment of the purchase price or work remuneration ("Werklohn"). The customer has no right to pledge the goods subject to retention of title, transfer title to them by way of security or otherwise put a lien on them. The customer is not allowed either to assign his claims arising from the resale of the goods subject to retention of title for the purpose of having them collected by way of factoring unless the customer irrevocably imposes on the factor the obligation to pay the compensation directly to us to such an extent as we have "secured claims" against the customer.

10.5 In the case that the goods subject to retention of title are resold by the customer, the latter is obliged to **secure** our rights in the amount of the secured claims if and to the extent that this is reasonable in the ordinary course of business. This can be done by the customer making the passing of the title to the goods sold by him to his own customers dependent on the full payment of such goods.

10.6 In case the goods subject to retention of title are resold by the customer, the customer already hereby assigns to us – limited to the amount of the secured claims – his future claims against his own customers or third parties arising from the resale (including any claims for current account balances) together with any and all security interest and ancillary rights, including any claims arising from bills of exchange and cheques. We hereby accept the assignment. If the goods subject to retention of title are sold together with other items at an all-round price, the assignment is limited to such part of the customer's invoice amount as is equivalent to the amount payable for the goods delivered subject to retention of title and resold by the customer together with other items. If goods are sold of which we have acquired co-ownership according to sec. 10.3, the assignment is limited to such amount of the claim as corresponds to our co-ownership share.

10.7 The customer is allowed to collect for us, in his own name and for his own account, the claims assigned to us under sections 10.2 and 10.6 unless this **authorization** is revoked by us. This is without prejudice to our right to collect the assigned claims ourselves. However, we will abstain from collecting the assigned claims ourselves and we will not revoke the collection authorization in favour of the customer provided that the customer is not in default of payment and his financial situation has not substantially worsened. In this case, the customer will be obliged to provide us with all necessary information and documents required to assert the assigned claims.

10.8 In the case of **default** or if the customer's **financial situation has substantially worsened** or in the case of any other breach of duty other than a minor one, the customer undertakes – subject to the regulations of § 107 subs. 2 InsO (German Insolvency Act) – **to return the goods subject to retention of title**. This obligation is independent of a withdrawal or the granting of a grace period. The customer already now allows us to enter his premises for the purpose of collecting the goods. We have the right to resell the goods so returned in the ordinary course of business and set the costs of realization incurred by us as well as all of our other claims against the customer off against the proceeds from such resale. We will only take back the goods subject to retention of title by way of security, the take-back may only be deemed to constitute withdrawal from the contract if explicitly so declared by us in writing. When, in the case of a withdrawal from the contract, the compensation payable for any fruits or benefits drawn from the goods is determined, the reduction in value which has meanwhile occurred must be taken into account, too.

10.9 The customer must inform us without undue delay ("unverzüglich") of any **execution levied** by a third party upon the goods subject to retention of title or the claims assigned to us or other security provided to us, providing at the same time any information required for intervention; the same applies in the case of any other impairment or encroachment whatsoever. If the third party is unable to reimburse us for the judicial or extra-judicial costs incurred by us in this connection, the customer will be liable for such costs.

10.10 We undertake to **release** security to which we are entitled under the preceding provisions at the customer's request to the extent that the value realizable from the security exceeds 110% of the estimated value of the goods subject to retention of title exceeds 150% of the claims to be secured. We may, in our sole discretion, choose the goods to be released. The realizable value is the proceeds which, at the time we make our decision regarding the request for release of security, can be gained from the realization of the goods subject to retention of title in the case of a (hypothetical) insolvency of the customer. The estimated value is the market price of the goods subject to retention of title valid at that point in time.

10.11 If and to the extent that the retention of title should be invalid under the **foreign law** of the country where the goods subject to retention of title are located, the customer will be obliged to provide equivalent security to us upon request. If the customer fails to do so, we may claim immediate payment of all outstanding invoices.

## 11. Place of performance ("Erfüllungsort"), place of jurisdiction, governing law

11.1 The **place of performance** is the domicile of our headquarters in 58791 Werdohl, Germany. The **place of jurisdiction** for all disputes arising out of commercial business transactions with merchants whose business requires commercial operation and who are hence required to be entered into the "Handelsregister" (commercial register) and who are subject to all requirements and regulations of the HGB (German Commercial Code) ("Vollkaufleute") and with legal entities under public law is the place of our headquarters in 58791 Werdohl (§ 38 ZPO - German Code of Civil Procedure). This also applies to actions for the assertion of claims arising out of a cheque or a bill of exchange. However, we are also entitled to sue the customer at the place of general jurisdiction applicable to him ("allgemeiner Gerichtsstand").

11.2 **German law** applies. The application of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG - "Vienna Sales Law") is excluded.

## 12. Severability

If individual provisions of these terms and conditions or the delivery transaction should be or become invalid in whole or in part, then the validity of the remaining provisions or the remaining parts of such provisions will be unaffected thereby.