

# TERMS & CONDITIONS

## I. Delivery

1. The delivery of the goods will be ex domestic works. The costs of delivery will be borne by the purchaser. The purchaser can determine the carrier. The goods shall be dispatched uninsured unless the purchaser in writing requests their insurance. In this case the insurance costs will be borne by the purchaser. A delivery advice note may be agreed.
2. In case of delivery ex out-of-town warehouse, a flat-rate warehouse surcharge may be invoiced.
3. Packing costs for special packaging will be borne by the purchaser.
4. Partial shipments have to be sorted and in the case of goods sold as combinations sorted ready for sale. They must follow each other in short intervals and have to be announced in advance. Unsorted partial shipments are permitted only with the purchaser's consent.
5. If the goods are not accepted on time due to the fault of the purchaser, the seller, at his option, has the right after setting a grace period of 12 days, either to issue a statement of accounts or rescind the contract or claim damages.

## II. Payment

1. Invoicing will be carried out on the day of the delivery or on the day the goods are made available, respectively. Postponement of maturity (fixing the value date) is absolutely excluded.
  2. Invoices are payable:
    - a. with 2% discount within 14 days after invoicing and dispatch of goods.
    - b. or until the 30th day net after invoicing and dispatch of goods.
- Starting from the 31st day, a default for late payment occurs according to § 286 paragraph II No. 1 of the German Civil Code.
3. All payments have to be effected in EUR-currency directly to seller's, not to representative's account.
  4. Payments will always be used to settle the oldest payable accounts plus the default interest accrued thereon.
  5. The postmark will always be decisive for the day of dispatch of payment. In case of bank transfer, the day preceding the crediting of the seller's bank will be taken as the day of dispatch of payment.
  6. In case of payments after the due date, interest amounting to 8% over the respective base rate of interest of the Deutsche Bundesbank (Federal Reserve Bank of Germany) will be charged.
  7. The seller shall not be liable to make further deliveries arising out of any contract in force before complete payment of due invoice amounts including interest has been made. The right to claim damages for default is retained.
  8. In case the purchaser fails to pay on the due date or in case of imminent insolvency or other essential deterioration of the purchaser's financial situation, the seller may, after setting a grace period of 12 days for deliveries that are still outstanding arising from any contract in force, cancel the period allowed for payment and demand cash before delivery or rescind the contract or claim damages.
  9. The offsetting and the retention of payable invoice amounts are only permitted in case of undisputed or legally binding claims. This also applies in case of suspension of payments by the seller. Other deductions (such as postage) are not permitted.
  10. Bills of exchange, to the extent they are accepted in part payment, will only be accepted against reimbursement of the charges. Bills of exchange and accepted bills of exchange with a term of more than three months will not be accepted.

## III. Reservation of Title

1. The seller retains ownership of the goods until all the claims arising from the delivery of the goods with respect to the total business relationship are settled in full. This includes ancillary claims, claims for damages and encashment of cheques and bills of exchange. The reservation of title will also continue if individual claims of the seller are received in a current account and the balance is determined and confirmed.
2. If the reserved goods are combined, mixed or processed by the purchaser in order to become a new personal property, this shall be made on behalf of the seller, without the seller becoming liable hereby. By combining, mixing or processing, the purchaser does not acquire the ownership of the new personal property according to §§ 947 seq. German Civil Code. If the goods are combined, mixed or processed with personal property that do not belong to the seller, the seller acquires co-ownership of the new personal property according to the ratio of the invoice value of his reserved goods to the total value.
3. If a central claims settling agent who assumes the del credere has been engaged in the conduct of business between the seller and the purchaser, the seller will assign the ownership at the dispatch of the goods to the central claims settling agency under the suspensive condition of payment of the purchase price by the central claims settling agent. The purchaser will only be released from his payment obligations after the central claims settling agent makes the payment.
4. The purchaser is entitled to resell or process the reserved goods only with due regard to the following conditions.
5. The purchaser may sell or process the reserved goods only in the course of ordinary business operations and provided there is no lasting deterioration in his financial situation.
- 6a. The purchaser hereby assigns the claim along with all ancillary rights arising from the resale of the reserved goods – including any balance of claims - to the seller.
- 6b. If the goods are combined, mixed or processed and if the seller has acquired coownership hereto amounting to the value of his invoice, he is entitled to the claim for the purchase price pro rata to the value of his rights to the goods.
- 6c. If the purchaser sells the claim under the conditions of genuine factoring, the purchaser will assign the claim against the factor taking its place to the seller and will pass on to the seller his sales proceeds pro rata to the value of the rights of the seller to the goods. The purchaser is bound to disclose the assignment to the factor if he is more than 10 days overdue with the settlement of an invoice or if his financial situation deteriorates considerably. The seller hereby accepts this assignment.
7. As long as the purchaser fulfils his payment obligations, he is authorised to recover the assigned claims. The authorisation to recover lapses in the event of the purchaser's failure to pay on the due date or if his financial situation deteriorates considerably. In this case the seller is hereby authorised by the purchaser to inform his buyers about the assignment and to collect the claims himself. To assert the assigned claims, the purchaser shall provide the necessary information and allow this information to be checked. In particular, on request, he shall submit to the seller a precise list specifying the claims due to him along with the names and addresses of the buyers, the amounts of the individual claims, the dates of the invoices etc.
8. If the value of the existing security for the seller exceeds the total value of all his claims by more than 10%, the seller shall be obliged, at the purchaser's request, to release securities of his own choice to this extent.
9. Mortgaging or transferring the reserved goods or the assigned claims by way of security are not permitted. The seller shall be immediately informed about attachments along with the particulars of the attaching creditor.
10. Taking back the delivered item by the seller in the course of exercising his right to reserve the title would constitute a rescission of the contract only if the seller makes an express declaration to this effect. The seller can satisfy his claims to the reserved goods taken back by sale on the open market.
11. The purchaser shall hold the reserved goods in safe custody for the seller free of charge. He shall insure them against the usual risks such as fire, theft and water to the customary extent. The purchaser hereby assigns to the seller his claims for compensation against insurance companies or other persons liable for compensation, which he is entitled to make, for damage of the types mentioned above, up to the invoice value of the goods. The seller accepts the assignment.
12. All claims and rights arising from the reservation of title to all the special forms specified in these provisions will remain valid until complete release from all contingent liabilities (cheque - bill of exchange) that the seller has assumed in the interests of the purchaser. In the case of sentence 1 the purchaser is generally allowed to do factoring for his receivable accounts. However, the purchaser shall inform the seller before incurring contingent liabilities.

## IV. Period of Delivery

1. The delivery of the goods will take place on specific dates (workday or a specific calendar week). All sales shall be concluded only with respect to specific quantities, articles, qualities and at fixed prices. Both parties are bound hereto. Transactions on a commission basis will not be made.
2. If the purchaser does not accept a quantity stipulated in his order and where in such a case alterations in our production cause loss or reduction of the same, we are entitled to assert the rights set out in Part I, Clause 5 of these Conditions.

## V. Interruption of Delivery

1. In the event of force majeure, labour disputes and other operational breakdowns that are beyond a party's control and that have lasted longer than one week or are expected to last for more than a week, the delivery period and/or deadline for acceptance of the goods will automatically be extended to cover the duration of the hindrance; however, the maximum time of extension is 5 weeks plus the grace period for delivery. The extension will only become effective, if the other party is immediately notified of the reason for the hindrance, as soon as it is clear that the stipulated deadline cannot be adhered to.
2. If delivery and/or acceptance do not take place in due time, the other contractual party may rescind the contract. However, such party must notify this in writing at least two weeks before exercising the right of rescission.
3. If, on inquiry, the other contractual party is not notified promptly (i.e. without undue delay) that the delivery or acceptance cannot take place in due time and if the hindrance has lasted for more than 5 weeks, the other contractual party is entitled to rescind the contract immediately.
4. Claims for damages are excluded if the respective contractual party has fulfilled his obligations according to Clauses 1-3 of this Part.

## VI. Period of Grace for Late Delivery

1. Upon expiry of the delivery period, a grace period for delivery of 12 days shall begin without a declaration to this effect. On expiry of the grace period for delivery, the rescission of the contract shall be deemed to have been made excluding any claims for damages. Rescission of the contract according to Clause 1, sentence 2 immediately above does not occur if the purchaser declares to the seller, during the grace period for delivery that he insists on the performance of the contract. However, the seller is released from his obligation of delivery, if, on inquiry by the seller within the grace period for delivery, the purchaser does not make a statement that he insists on the performance of the contract.
2. Transactions for delivery on a fixed date will not be made. However, if the parties agree in specific cases that the goods are intended for a specific promotion campaign, a definite time for delivery without a grace period can be agreed to. If this time for delivery is not met, the purchaser may demand reimbursement of special expenditures for the goods ordered provided that this amount does not exceed the purchase price of the goods ordered. Any further claims are excluded. If the campaign goods are defective, the purchaser can only reduce the purchase price or rescind the contract.
3. Should the purchaser wish to claim damages instead of performance, he must set a 4-week time limit for the seller giving warning that he will refuse performance after the expiry of this time period. The time period will be calculated starting from the day on which the purchaser's notification by registered mail is dispatched. This provision will apply in lieu of rescission of the contract as specified in Clause 1, sentence 2 of this Part only if the notification of this time limit set by the purchaser reaches the seller within the grace period for delivery.
4. For goods in stock ready for dispatch and for NOS goods ("Never - out - of - Stock"), the grace period for delivery will be 5 working days. The purchaser shall be informed promptly in case of non-delivery. Otherwise, the provisions of Clauses 1 and 3 shall apply.
5. The purchaser's claims arising from delayed delivery are unenforceable before the expiry of the grace period for delivery.

## VII. Passing of Risk

The risk of damage or loss passes to the purchaser - also in case of delivery free of charge - at the moment when the goods leave our company or warehouse. Should the purchaser default in accepting the goods, the risk passes at the aforementioned time.

## VIII. Liability and Notice of Defects

1. The samples based on the order shall only constitute indications as to the present state of technology and thus only represent product information. They are expressly not a guarantee of quality and durability.
2. Notices of defects shall immediately be sent to the seller in writing at the latest within 12 days after receipt of the goods. Direct deliveries to third parties by us or forwarding by the purchaser do not prolong the period of notice of defects.
3. Any complaints regarding apparent defects are excluded after cutting or the start of any other kind of processing of the delivered goods.
4. In case of justified notices of defect the seller has the right to repair or deliver replacement goods free of defects within a period of 12 days from receipt of the returned goods. In this case the seller shall bear the freight charges. If the subsequent performance proves to be a failure, the purchaser shall only have the right to reduce the purchase price or to rescind the contract.
5. After the expiry of the time period specified in Clause 4 above the purchaser only has the right to reduce the purchase price or to rescind the contract.
6. The purchaser shall notify the seller about hidden defects immediately once they are discovered. A notice of defect given in due time only entitles the purchaser to reduce the purchase price or to rescind the contract.
7. Complaints will not be accepted regarding minor, technically-unavoidable deviations in quality, colour, width, weight, finish or design. This also applies in case of deviations that are customary in the trade unless the seller has given a written declaration to deliver goods according to the sample. For synthetic materials a guarantee of colour fastness cannot be made. Therefore a change in colour does not constitute a defect.

## IX. Other Conditions

1. Place of performance for all terms of the delivery contract is the supplier's place of business. The plaintiff may choose as the place of jurisdiction (also for actions arising out of bills of exchange or cheques) the place where the supplier's business premises are established or the registered office of the specialised branch or cartel organisation responsible for the supplier (Industrieverband Game-Gewebe-Techn. Textilien, Krefeld). The court to which recourse is first sought has jurisdiction.
2. The laws of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 is excluded.
3. Supplementary oral agreements are only valid after written confirmation on our part.
4. Orders placed at trade fairs, during travelling or through a commercial agent are to be regarded as offers made by the purchaser. They become valid only when confirmed by us.
5. An order „as made previously“ refers only to the quality but not the price of the goods.
6. Other conditions mentioned by the customer without written confirmation from us are not binding on us, even if there is no contradiction on our part.
7. If the provisions of these conditions of delivery and payment or other contractual terms are or become invalid, or prove to be incomplete, the remaining conditions retain their validity. The parties hereto are obliged to replace the invalid terms with valid provisions.

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BemaX GmbH · Regentenstraße 49 · 42389 Wuppertal  
Handelsregister Amtsgericht Wuppertal, HRB 24271 · Steuer-Nr. 131/5902/1248 · USt-IdNr. DE272688992  
Geschäftsführer Sina Bubbenzer, Dirk Peer Bubbenzer  
[www.bemax-systems.com](http://www.bemax-systems.com)