

# General Terms and Conditions of Sale of Brunner Electronic GmbH

## 1 Validity

- 1.1 These General Terms and Conditions of Sale apply to all sales or deliveries of products (hereinafter referred to as **"Products"**) and other services of Brunner Electronic GmbH (hereinafter referred to as **"Seller"**) to their customers (hereinafter referred to as **"Buyer"**), provided that the Buyer is an entrepreneur within the meaning of § 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law. They shall also apply to all future transactions, deliveries and services, even if no separate reference is made to them.
- 1.2 These General Terms and Conditions of Sale shall apply exclusively. Terms and conditions deviating from, conflicting with or supplementing these General Terms and Conditions of Sale are excluded. Deviating, conflicting or supplementary terms and conditions shall only apply if and to the extent that the Seller has expressly agreed to their validity in the individual case. The reference to an order, letter, e-mail or other statements of the Buyer which contain or refer to deviating, conflicting or supplementary terms and conditions, or the unconditional performance of a service or delivery of the Seller with knowledge of such terms and conditions, shall not constitute an agreement of the Seller and in such cases the exclusive application of these General Terms and Conditions of Sale shall remain unaffected.

## 2 Conclusion of contract

- 2.1. The offers of the Seller are subject to change and non-binding unless they are expressly designated as binding by the Seller in individual cases.
- 2.2 Orders or commissions of the Buyer shall be deemed to be a binding offer of contract. Unless otherwise stated in the purchase order or the order, the Seller shall be entitled to accept this contractual offer within 10 days of receipt by means of an order confirmation.
- 2.3 The contract concluded with the Buyer's order or purchase order and the Seller's order confirmation fully reflect the agreements between the Seller and the Buyer; oral agreements between the contracting parties shall be replaced by these General Terms and Conditions of Sale unless it is expressly stated that they shall continue to be binding. Additions and amendments to the contract, including these General Terms and Conditions of Sale, must be made in writing or text form (e.g. by letter, fax or e-mail) in order to be effective.

## 3 Delivery

- 3.1 Unless expressly agreed otherwise, the Products shall be delivered ex Seller's facility. Unless expressly agreed otherwise, the risk shall pass to the Buyer when the Products are handed over to the forwarding agent, carrier or other third party entrusted with the transport or (in the event of collection by the Buyer) to the Buyer.
- 3.2 Unless expressly agreed otherwise, the information on delivery times is approximate. Unless expressly agreed otherwise, information on delivery times refers to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.
- 3.3 The Seller is entitled to partial delivery for justified reasons, insofar as this is reasonable for the Buyer. Each partial delivery leads to partial fulfilment of the delivery obligation.
- 3.4 Deliveries presuppose the timely and proper fulfilment of all obligations of the Buyer. The right to plead non-performance of the contract remains reserved.
- 3.5 In the event of default in acceptance or other culpable breach of duties to cooperate on the part of the Buyer, the Seller shall be entitled to compensation for the resulting damage, including any additional expenses. Further claims remain reserved. In this case, the risk of accidental loss or accidental deterioration of the Products shall pass to the Buyer at the time of default of acceptance or other breach of obligations to cooperate.
- 3.6 The Seller shall not be liable for the impossibility to deliver or for the delay in delivery, insofar as this was caused by an event of force majeure or other events unforeseeable at the time of the conclusion of the contract for which the Seller is not responsible. Events of force majeure and unforeseeable events within the meaning of the preceding sentence are in particular work disruptions and interruptions, impossibility or delays in the procurement of raw materials, delays in transport, strikes, lockouts, energy shortages, difficulties in obtaining official permits, official measures, pandemics or epidemics or non-delivery, incorrect delivery or late delivery by upstream suppliers for which the Seller is not responsible. If the Seller is not able to meet delivery times due to such events, it will immediately inform the Buyer. If such events are only of temporary duration, the delivery times shall be extended accordingly. If such events make it considerably more difficult or impossible for the Seller to deliver and the hindrance is not only temporary, the Seller shall be entitled to withdraw from the contract in whole or in part; in this case, any payment already made or other consideration already provided shall be refunded to the Buyer without delay.
- 3.7 The occurrence of the Seller's default in delivery shall be determined in accordance with the statutory provisions; however, a reminder by the Buyer shall be required in any case.
- 3.8 The rights of the Buyer pursuant to Clause 7 of these General Terms and Conditions of Sale as well as the statutory rights of the Seller (e.g. in case of impossibility of performance) shall remain unaffected.

#### **4 Prices, terms of payment, set-off and retention**

- 4.1 Unless expressly agreed otherwise, prices are in euro, ex Seller's facility and excluding the cost of packaging. Unless otherwise agreed, they are to be intended net of the respective statutory value added tax and any other taxes, customs duties or other import or export charges.
- 4.2 Unless expressly agreed otherwise, the prices for the Products shall be determined in accordance with the prices agreed at the time of the conclusion of the contract, insofar as the delivery takes place within four months of the conclusion of the contract and it concerns individual orders. If delivery is made later than four months after conclusion of the contract or within the scope of continuing obligations, the prices shall, unless otherwise agreed, be determined in accordance with the Seller's price list valid at the time of delivery.
- 4.3 Unless expressly agreed otherwise, the purchase price is due and payable without deductions after invoicing and delivery. However, the Seller is entitled at any time to make a delivery in whole or in part only against advance payment. The Seller must declare a corresponding reservation at the latest with the order confirmation.
- 4.4 In the event of default in payment, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. The Seller reserves the right to assert further damages caused by delay.
- 4.5 In the event that taxes or public charges of any kind are newly introduced or increased after the contract with the Buyer has been concluded, the Seller is authorised to add the cost increase to the agreed price accordingly.
- 4.6 In the event that, after the conclusion of the contract, the Seller has reasonable grounds to assume that the Buyer is not in a position to fulfil its obligations (e.g. if the Buyer fails to make due payments), the Seller shall be authorised, at its discretion, to deliver Products only against advance payment or appropriate security. The legal claims of the Seller remain unaffected.
- 4.7 Offsetting with counterclaims of the Buyer or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been legally established.

#### **5 Retention of title**

- 5.1 Until all present and future claims arising from the purchase contract and the current business relationship (secured claims) have been fulfilled, the delivered Products remain the property of the Seller (goods subject to retention of title).
- 5.2 The Buyer is obliged to keep the goods subject to retention of title for the duration of the retention of title with the diligence of a prudent businessman. The Buyer shall insure the goods subject to retention of title adequately against fire, water and theft damage at replacement value at its own expense and shall provide the Seller with the corresponding proof of insurance upon the Seller's request and to assign the claims arising from the insurance contract to the Seller.
- 5.3 Until revoked in accordance with Clause 5.6, the Buyer is entitled to resell the goods subject to retention of title in the ordinary course of business.
- 5.4 Until revoked in accordance with Clause 5.6, the Buyer shall be entitled to process the goods subject to retention of title in the ordinary course of business. The retention of title shall extend to the products resulting from the processing, mixing or combining of the goods subject to retention of title at their full value, whereby the Seller shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, the Seller shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. The regulations for the goods subject to retention of title shall apply accordingly to the resulting products.
- 5.5 The Buyer hereby assigns to the Seller by way of security all claims against third parties arising from the resale of the goods subject to retention of title or the products arising in accordance with Clause 5.4 in total or in the amount of the co-ownership share in accordance with Clause 5.4. The Seller accepts the assignment. The Buyer shall remain authorised to collect the claims assigned as security until revoked in accordance with Clause 5.6. In the event of revocation in accordance with Clause 5.6, the Buyer shall notify the Seller of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and notify the debtors of the assignment.
- 5.6 The Seller may revoke the authorisation to resell the goods subject to retention of title in accordance with Clause 5.3, to process, mix or combine them in accordance with Clause 5.4 and to collect the claims assigned as security in accordance with Clause 5.5 in the following cases: if the Seller asserts the retention of title by exercising its rights under Clause 5.9, if the Buyer is threatened with insolvency, if the Buyer fails to meet its payment obligations arising from the business relationship at the due date, if an application has been made to open insolvency proceedings against the assets of the Buyer or if the opening of such proceedings has been rejected for lack of assets.
- 5.7 If the realisable value of the securities exceeds the secured claims by more than 10%, the Seller shall release securities of its choice at the Buyer's request.
- 5.8 The goods subject to retention of title and the claims assigned as security in accordance with Clause 5.5 may not be pledged to third parties or assigned as security before the secured claims have been paid in full. The Buyer undertakes to notify the Seller without delay of any compulsory enforcement measures (or measures corresponding thereto) by third parties in respect of the goods subject to retention of title and/or the assigned claims and to make available all related documents (in particular the compulsory enforcement documents). In addition, the Buyer shall provide the Seller with an affidavit in which the Buyer declares that the goods subject to enforcement are the Seller's goods subject to retention of title. The costs of the Seller's measures to avert enforcement shall be borne by the Buyer unless they shall be borne by third parties.

- 5.9 In the event of any breach of contract by the Buyer, the Seller shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand the return of the goods subject to retention of title based on this latter basis. If the Buyer does not pay the purchase price due, the Seller may only assert these rights if it has previously set the Buyer a reasonable deadline for payment without success or if such a deadline is not mandatory according to the statutory provisions.

## **6 Warranty**

- 6.1 The warranty period is one year from delivery or, if acceptance is required, from acceptance.
- 6.2 The Products must be inspected by the Buyer immediately after delivery to the Buyer. The Products shall be deemed to have been approved by the Buyer with regard to obvious defects or other defects which would have been recognisable during an inspection if the Seller does not receive a written notification of defects immediately, at the latest, however, within 5 working days after delivery. With regard to other defects which are not recognisable during the inspection, the Products shall be deemed to have been approved by the Buyer if the Seller does not receive written notification of the defect immediately, at the latest, however, within 5 working days after the discovery of the defect. If the Buyer fails to properly inspect the Products and/or give notice of defects, the Seller's liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.
- 6.3 The Seller may remedy a defect in the Products at its discretion by subsequent delivery or repair (subsequent performance).
- 6.4 If the subsequent performance fails, is impossible, is refused in its entirety by the Seller or is unreasonable for the Buyer or if a reasonable deadline to be set by the Buyer for the supplementary performance has expired unsuccessfully or is not mandatory according to the statutory provisions, the Buyer shall be entitled to reduce the purchase price (reduction) or to demand the termination of the contract (termination) at its discretion. In the case of an insignificant defect, however, there is no right of termination.
- 6.5 The Buyer shall be entitled to claims for damages or reimbursement of futile expenses also in the event of defects in the Products only in accordance with section 7 of the General Terms and Conditions of Sale.

## **7 Liability**

- 7.1 The Seller shall be liable for damages within the scope of fault-based liability in accordance with the statutory provisions unless liability is excluded or limited in accordance with the provisions of this Clause 7.
- 7.2 The Seller shall not be liable in the event of simple negligence on the part of its bodies, legal representatives, employees or vicarious agents, insofar as this does not involve a breach of material contractual obligations. Material contractual obligations are obligations whose fulfilment is essential for the proper performance of the contract and on whose compliance the Buyer regularly relies and may rely.
- 7.3 Insofar as the Seller is liable in cases of simple negligence in accordance with the above Clause 7.2, its liability shall be limited to compensation for the foreseeable, typically occurring damage. Unless otherwise agreed, the total remuneration (net) agreed in the relevant individual contract shall be deemed to be the foreseeable, typically occurring damage and, in the case of continuing obligations or purchase or delivery contracts with longer terms, the total remuneration (net) paid annually.
- 7.4 The exclusions and limitations of liability apply to the same extent in favour of the bodies, legal representatives, employees and vicarious agents of the Seller.
- 7.5 The exclusions and limitations of liability in this Clause 7 shall not apply to the Seller's liability for wilful or fraudulent conduct, for guaranteed characteristics of the Products, for injury to life, body or health or under the German Product Liability Act.

## **8 Place of performance, choice of law, place of jurisdiction**

- 8.1 Unless expressly agreed otherwise, the place of performance shall be the registered office of the Seller.
- 8.2 These General Terms and Conditions of Sale and all contracts between the Seller and the Buyer shall be governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is excluded.
- 8.3 The exclusive place of jurisdiction for all disputes arising from or in connection with the contract is Schweinfurt. This also applies if the Buyer does not have a general place of jurisdiction in the Federal Republic of Germany or has moved its usual place of residence abroad after conclusion of the contract. However, the Seller is entitled to sue the Buyer at any other place of jurisdiction.