

# baumhueter extrusion GmbH

## General Terms and Conditions for Sale and Delivery

### § 1 Applicability and Governing Law

1. The following conditions apply exclusively for all - including future - contracts and deliveries, unless they have been agreed differently in writing. All other earlier conditions are no longer valid. Our conditions also apply, when we carry out deliveries in the knowledge of contradictory or deviating conditions set by the customer.
2. Possibly deviating trading conditions set by the customer, especially purchase conditions, are not applicable, even in the case, when we do not directly object to them.
3. These conditions and contracts and deliveries, which have been agreed as part of business transactions, are exclusively subject to the legislation of the Federal Republic of Germany. The validity of the regulations of the UN agreement regarding contracts for the international sale of goods of 11.4.1980 (CISG) is herewith excluded.

### § 2 Completion of Contracts

1. Our offers, prices and other statements are free from obligation unless it has been expressly agreed otherwise.
2. Customer orders are only considered as accepted, when acknowledged by us in writing, per telex (fax, email), when the goods are delivered or when an invoice has been sent.
3. Changes, amendments or additional agreements need to be confirmed in writing.
4. Agreements, with regards to sold goods, are only valid as assured according to § 459 Abs. 2 BGB, when they have been expressly noted as affirmed. Especially sorting information and references for DIN norms are not assured, unless they are marked as such, but are merely more precise description of goods.
5. Changes in the appearance of goods, which, in good faith, are considered as unimportant for the completion of the contract are admissible. Samples and patterns are considered only as approximate examples for quality, size and colour, unless they were sold specifically according to pattern or example or we have confirmed in writing that certain quality features would be maintained.
6. The phrases "circa" or "approximately", when quantities are quoted, allow us to deviate 10% over or below the contractual quantity.

### § 3 Prices

1. If not otherwise specified, then the prices are in EURO from our depot or delivered free. In addition, prices are subject to VAT at the appropriate statutory rate.
2. If another currency other than EURO is agreed, then the customer must reimburse, upon request, the exchange rate difference between the exchange rate at the time of the completion of the contract and time of payment.
3. Prices in sales of "Carriage Paid to Named Destination" refer to reasonable shipping and transport conditions as well as insurance against the normal transport risks. Extra costs, if the customer requires a different form of transport or more wide reaching insurance, must be borne by the customer.
4. Prices are subject to regulatory taxes and duties as valid at the time of the completion of the contract. Changes in these taxes and duties, which are not known at the time of the completion of the contract (for instances changes in import duties, customs or consumer duties, additional export levies or lowering of refunds), must be borne by the purchaser. Increases in shipping or insurance costs, after the completion of the contract, are also borne by the customer.
5. Should the delivery be made later than four months after completion of contract or if the delivery is delayed by that time, because of circumstances caused by the customer, we are obliged to invoice the prices, which are valid on the day of delivery instead of those agreed.

### § 4 Delivery

1. International commercial terms (Incoterms), used for the interpretation of commercial clauses, are decisive in their latest version, as appropriate.
2. In all cases, the correct and on-time self-delivery is reserved. The customer is informed of the availability of the delivery immediately and service follows immediately.
3. The delivery is made within the agreed delivery period according to our choice. In case of forces beyond our control and other unforeseeable, extraordinary events, events which are not our fault, and which happen to us or our suppliers and make the delivery impossible or make it overly difficult (for instance bad transport conditions) we are absolved from our delivery obligations for the duration of the delay and its effects, even then when they occur during the process of delivery. We will call upon the named circumstances only when the customer has been informed immediately when they happen. If the delay is longer than two months, we have right to cancel the contract fully or partially without being liable to compensation.
4. We have the right to make partial deliveries. They count as independent deliveries or services and must be paid separately upon request. If the payment of the partial delivery or partial service is delayed without legitimate reason we can stop further deliveries or services.
5. Delayed delivery, when the delivery date has been exceeded, only occurs when the extension period, which was appropriately agreed with the customer, has passed - unless a "fixed" transaction had been agreed. Otherwise the regulations of § 326 BGB apply with the limitation that the customer is only entitled to cancel the contract, that further claims for compensation are excluded, unless the delay is caused by gross negligence or intent.
6. The purchaser must accept the goods within three working days after we have informed him of their readiness to be delivered. If he does not meet this obligation immediately, we are entitled to cancel the contract after the expiry of an appropriate extension set by us, also without warning of cancellation or demand compensation for non compliance with the contract. In the case of on-call sales without fixed delivery date, we can ask that the purchaser does accept the goods in full within two months after completion of contract.

### § 5 Complaints and Warranty

1. The purchaser is obliged to examine the goods immediately upon delivery for faults, type and quantity. This examination must refer to all quality features, which are relevant to processing or workmanship.
2. Obvious faults must be reported immediately (usually by five working days after delivery at the latest) in writing per fax or per e-mail. Hidden faults must be reported immediately within three days of discovery in the same way.
3. The purchaser is also obliged to make his own examination appropriately and report faults in the case of selling on the goods.
4. If the delivered goods are amended or processed, all rights to warranty claims, which may have become apparent when goods would have been examined appropriately in the first place, will cease.
5. In the case of a valid and timely complaint the rights of the purchaser are limited to a re-delivery. If we reject the re-delivery or two re-deliveries fail after an appropriate extension, the purchaser can demand an exchange or reduction.
6. Goods delivered by us are subject to the statutory regulations of the Federal Republic of Germany, relevant deviations with regards to foreign countries, which need appropriate agreement.

### § 6 Compensation

1. All customer claims for compensation, on whatever legal basis, are excluded, unless they are foreseeable faults due to the omission of an assured feature, especially when

the assurance served the customer as protection against such faults or they are faults which can be attributed to the gross negligence of the management or a leading employee, or if they are foreseeable faults, which are due to a breach of our major contractual obligations.

2. In case of responsibility for product liability the customer is obliged to release us from any product liability, which we may be made responsible for by third parties - for whatever legal reason - inasmuch when the customer has caused the fault which has triggered the liability. If we are made liable to third parties due to product faults, we can pursue redress against the customer in full, when he has caused the fault fully or to the greatest part. Possible claims for compensation by the customer according to § 5 Product Liability Law or §§ 840, 426 BGB are excluded, this does not apply if the fault was caused by us due to gross negligence or intent.

### § 7 Payment and Delayed Payment

1. Invoices are due for payment immediately upon receipt without any deduction, unless otherwise agreed.
2. The acceptance of bills of exchange is subject to special agreement, to which we are not bound. When we do accept bills of exchange, the costs of discounts and collection from the customer, discount charges, bills of exchange tax, interest occurred due to delay must be paid immediately. Bills of exchange and cheques are accepted, provisionally, only under the condition that they will be cleared.
3. Discounts are given with the condition, that the purchaser's account does not show any other due amounts. Only the basic value of the goods is discountable.
4. If the customer delays payment, we are obliged to charge interest of 5% above the base rate of the European Central Bank as compensation for the delay. We reserve the right for compensation when payment is further delayed.
5. Without consideration of the agreed method of payment, we can demand pre-payment or a security deposit, when the financial position of the customer worsens considerably after completion of contract, or there is justified doubt as to the paying ability or willingness of the customer, or the information about the financial position of the customer obtained from a credit agency, bank or credit insurance worsens. If the customer refuses pre-payment or a security deposit, we are obliged to cancel the contract, to stop any further deliveries and to demand compensation for expenses incurred so far. Furthermore we are obliged under the conditions stated in point 1 to cancel agreed price levels for goods already delivered.
6. Conditions of payment are "net cash" unless explicitly agreed otherwise. The customer can only add counter claims or apply the right to withhold payment when this has been determined legally and is undisputed.

### § 8 Transport and Transfer of Risk

1. Shipping is undertaken at the purchaser's cost and risk. We determine the means of transport and its route when no agreement has been made, without taking responsibility for the cheapest or quickest way. In principle goods travel without being insured, unless we have been obliged to do so after explicit agreement or under the trading clauses used. We will only insure against the usual transport risks if expressly asked by the customer and at his cost.
2. Unless not otherwise stipulated by the trading clauses used, the risk is always transferred to the customer with the handover of the goods to the carrier or transport agent. This applies especially to the clause "free delivery", which exclusively refers to the acceptance of the transport costs by us. If the goods are ready and delivery is delayed for reasons not due to us, then the risk is transferred to the customer at the point of the notification of readiness of goods.
3. When goods are damaged or lost in transit the customer must submit a statement of facts to the transport agent without delay and must inform us immediately.
4. Although we are obliged to accept the return of packaging, the customer must bring packaging back to our factory at his own cost. If packaging is soiled, above the normally expected extent and this was not caused by our products, we are entitled to reject the affected packaging according to our estimation or to dispose of it at the customer's expense.

### § 9 Reservation of Proprietary and Security Rights

1. Delivered goods remain our property up to full payment of all and future demands - arising and conditional - from our business contacts with customers, including subsidiary demands. Reservation of proprietary rights remains as long as we have not been finally released from a liability to honour a credit, which we have incurred in the interest of a customer. It also remains in place when our individual demands are taken into running account and the balance has been drawn and approved.
2. The customer is entitled to the processing, combining or mixing of the delivered goods with other goods not belonging to us, in the course of his regular business transactions. If the right of property of the goods diminishes with this, the purchaser transfers already at this point the shared right of property of the article, which was produced by way of processing, combining or mixing, in relation to invoice value versus the remaining processed goods at the time of the amalgamation. The purchaser is obliged, to keep safe any goods subject to retention, free of charge, to store them separately from other articles and to mark them as property.
3. The customer is entitled to trade the articles subject to retention until further notice in the course of his regular business transactions, inasmuch as this further trading is carried out under the condition that specific notification is made of the continued reservation of property. The customer transfers already at this point all entitlements together with all subsidiary rights arising from trading-on. However, he is authorised until further notice to collect the relinquished demands himself. We will not apply the right to retract the trading and collecting authorisation - as long as the customer meets his payment obligations to us punctually. Upon request the customer must name the claiming debtors and give us all the information needed for the claiming of demands and enforcement of entitlements as well as the necessary documentation.
4. When payment has been stopped, insolvency procedures have been applied for, a cheque or bill of exchange has been queried or goods have been seized, the right to trade-on and to process the goods of retention is extinguished. Any sums of money accrued later from prior trading must be placed in a special account immediately.
5. Pledging or mortgaging goods subject to retention is not allowed. The purchaser must inform us immediately of any enforced litigation by third parties with regards to goods subject to retention and must submit documentation necessary for an intervention.
6. Inasmuch as the validity of proprietary rights or other agreed security rights are bound by special conditions or documentary regulations in a country to which we deliver upon the customer's request, the customer is obliged to bear the costs of fulfilling these.
7. If the customer violates any significant contractual obligations, especially delay in payment, we are entitled to seize the goods upon warning and the customer is obliged to release them. When goods subject to retention are seized or impounded by us, inasmuch as that the purchase law is not applicable, this does not constitute a cancellation of the contract.
8. If the value of the securities, granted to us, exceeds our demands by more than a total of 20%, then we guarantee to return the surplus value of the customer's securities upon demand.

### § 10 Place of Performance and Place of Jurisdiction

1. Place of performance for the delivery is the location, where the goods are held for the purposes of delivery or collection by the purchaser. Otherwise place of performance for all other commitments, due to this contract, especially payments, is Bielefeld.
2. Any disputes arising from this contract are to be resolved according to our choice either by the tribunal for amicable arbitration in Bielefeld or by the legal courts. The place of jurisdiction for claims involving bills of exchange or cheques is Bielefeld; we also have the right to elect to prosecute the purchaser at his location. We have to apply our right to elect within two weeks of being requested by the customer.
3. Should one or several provisions of these conditions or contract be or become invalid, then the validity of the remaining provisions is not affected. In the case that a provision becomes invalid, another provision takes its place which is as close in its commercial content as possible.

### § 11 Storage of Data

The customer agrees that his data, especially customer data relevant for the purposes of completion of contract, will be stored by us according to § 33 data protection act.