

Standard Terms and Conditions of Sale and Delivery of B&S Industrieservice GmbH (B&S)

Per: 04 / 2011 - Rev. 1

§ 1 Exclusive Application

Unless expressly agreed otherwise in writing in a specific case for all or some individual provisions, these Standard Terms and Conditions shall apply exclusively to any and all goods and services provided by B&S. They shall also apply to any future business relations. Any and all standard terms and conditions of the party making the order (hereinafter referred to as the "Customer") shall not be acknowledged by us *per se*, even if we do not expressly contest same or provide goods and services ordered by the Customer without reservation in knowledge of the Customer's standard terms and conditions.

§ 2 Offer, Written Form, Cancellation

1. Our offers are non-binding.
2. Orders and declarations of acceptance shall be legally valid only if confirmed by us in writing. In the case of immediate delivery/service, written confirmation may be replaced by invoicing.
3. Deviations from and modifications to agreements between the Customer and B&S, including these Standard Terms and Conditions, must be in writing. The writing requirement may be waived in writing only.
4. Should these Standard Terms and Conditions of Sale and Delivery or individual legal transactions between B&S and the Supplier

require written form, the relief under § 127 paragraph 2 of the German Civil Code ("BGB") shall apply.

5. Should the Customer cancel the contract for reasons for which we are not responsible, we may demand reimbursement of the costs incurred up to the date of cancellation. The right to assert additional damage shall remain unaffected thereby.

6. Section 312e paragraph 1 sentence 1 numbers 1 to 3 and sentence 2 of the German Civil Code ("BGB") shall not apply to transactions concluded by way of e-business, unless the Customer is a consumer within the meaning of the BGB.

§ 3 Delivery Time and Delivery

1. Dates and delivery deadlines shall be non-binding unless expressly agreed otherwise in writing. Should we state specific delivery deadlines and dates, this shall be subject to correct and timely delivery by our own suppliers and manufacturers.
2. Delivery deadlines shall be suspended during events of *force majeure*, stoppages or disruptions, in particular, strikes or other unforeseeable events for which we are not responsible. Should the delivery be delayed by more than 8 (eight) weeks as a result, each party may rescind the contract, in whole or in part

(based on the quantity affected by the delay). Moreover, the delivery deadline shall be extended by any period during which the Customer itself is late in performing its contractual duties.

3. If, in application of paragraph 2, the delivery time is delayed or should we be discharged of our obligation as a result of rescission by one of the parties, then the Customer may not derive any compensatory damages claims therefrom.

4. Our goods and services shall be provided "ex-works".

5. B&S may render partial delivery and partial services. In the case of supply agreements, each partial delivery and partial service shall be deemed independent performance.

§ 4 Default in Acceptance

1. We may store the delivered items at the Customer's risk and expense for the duration of any default in acceptance by the Customer. To this end, we may also avail ourselves of the services of a shipping company or storage company.

2. The Customer shall reimburse us any and all costs associated with the default in acceptance, in particular, storage costs. The right to assert additional damage shall remain unaffected thereby.

3. Should the Customer fail to accept delivered items for reasons for which we are not responsible, we may, following expiry of a reasonable period, rescind the contract and/or demand reimbursement of fruitless expenses or compensatory damages instead of performance.

§ 5 Passing of Risk

The risk for accidental damage or accidental destruction (loss) of the delivered items shall pass to the Customer upon sending or delivery thereof to the shipping agent, and no later, however, than upon departure from our plant, irrespective of whether the shipment is sent from the place of performance or who bears the shipping costs. Should the Customer have defaulted in acceptance, risk shall pass to the Customer upon commencement of such default. If special instructions from the Customer must be awaited for shipping, risk shall pass to the Customer upon notification that the goods are ready for shipment. Risk shall also pass upon notification that the goods are ready for shipment if shipment is then delayed or becomes impossible without any fault on our part.

§ 6 Complaints for Defects, Liability for Defects

1. Information concerning the delivered goods or services (e.g. in catalogues, product information, electronic media or on labels) is based on our general experience and knowledge, and

constitute only guidelines or identification marks (*Kennzeichen*). Neither such product information nor expressly agreed performance features/purposes of use shall discharge the Customer from its obligation to test the product for its suitability for the intended purpose. Information concerning the shelf life, condition (quality) or potential uses of our products shall not constitute any warranty within the meaning of § 443 BGB, unless they are expressly identified as such in writing.

2. Without undue delay following delivery thereof, the Customer shall inspect the goods to verify whether they meet the contractually agreed quantity and quality criteria and are suitable for the intended use. In the case of patent defects/differences in quantity, formal complaints must be filed with B&S without undue delay and in writing (and no later, however, than within 14 days), and in the case of latent defects/differences in quantity, without undue delay and no later than within 1 (one) year of delivery of the goods to the Customer, stating the order data, the invoice and delivery note number, and giving a short description of the fault. Should a timely complaint not be filed, any warranty claims against us shall be excluded, unless we maliciously concealed the defect or provided a warranty.

3. Any liability for defects shall lapse if our operating and maintenance instructions are not followed, modifications are performed, parts are changed or materials are used with the

goods that do not conform with the original specifications, provided the defect is based thereon. The same shall apply if the defect can be attributed to improper use, storage and handling of the products or third party interference therewith.

4. Our liability for defects shall be limited to subsequent performance, i.e. the Customer's right to demand at its discretion rectification of the defect or delivery of an item in a perfect condition at our expense; § 439 paragraph 3 BGB shall remain unaffected. Should for whatever reason subsequent performance fail following a reasonable grace period, the Customer may – at its discretion – demand reduction of the purchase price or rescind the contract; in this event – subject to the provisions of § 7 – the right to assert compensatory damages or reimbursement of fruitless expenses shall remain unaffected. These rights shall vest in the Customer immediately, i.e. without the expiry of a reasonable grace period, if we refuse to render subsequent performance or the customer cannot be reasonably be expected to agree to subsequent performance for other reasons. The Customer's claims in the event that B&S provides a warranty and the claims under rights of recourse pursuant to § 478, 479 BGB shall remain unaffected by the foregoing provisions; however, in the event of recourse, the Customer shall have compensatory damages claims only in accordance with § 7 of these Standard Terms and Conditions.

5. Liability for defects resulting from normal wear and tear shall be excluded. Moreover, there shall be no warranty claims for worn parts.

6. Warranty claims against us shall become statute barred after 1 (one) year, commencing with delivery of the goods, unless we maliciously concealed the defect, in which case the normal limitations period of 3 years shall apply.

7. Warranty claims against us shall vest in the Customer only, and may not be assigned.

§ 7 Limitation of Liability

1. We shall be liable for damage or fruitless expenses – whatever the legal basis therefor – only if they are based on a wilful or grossly negligent violation of a duty and/or tortious conduct on the part of B&S, its statutory representative or vicarious agent. In the event of ordinary negligence, any liability on our part shall be excluded. This exclusion of liability shall not apply if we, our statutory representatives or vicarious agents violate a material contractual duty. In this event, however, the quantum of any compensatory damages or reimbursement of expenses shall be limited to the damages/expenses that B&S would typically have had to expect based on the circumstances known to it as at the date of conclusion of the agreement and that were therefore foreseeable at such time, provided no wilful or grossly negligent conduct has occurred.

2. Our liability for damages for injury to life, limb or health or under the Product Liability Act (*Produkthaftungsgesetz*) or as the result of provision of a warranty shall remain unaffected by the foregoing provisions.

3. The liability provisions set forth in paragraphs 1 and 2 shall also apply to instructions and suggestions for use.

4. Should our liability be excluded or limited pursuant to the foregoing provisions, this shall also apply to the personal liability of our employees, workers, representatives and vicarious agents.

§ 8 Retention of Title

1. We shall retain title in the goods delivered by us until full payment of any and all receivables owed under the business relationship with the Customer. Title shall pass to the Customer only when the Customer has satisfied all its liabilities towards us.

2. Any processing or restructuring shall always be carried out for us as the manufacturer within the meaning of § 950 BGB, but without, however, any obligation on our part. If the goods are processed together with other items not owned by us, then we shall acquire co-ownership in the new item according to the ratio of the value of the purchased item (final invoice amount plus value added tax) to the

other processed items at the time of processing. If the goods are connected or inseparably combined with other items not owned by us, we shall acquire co-ownership in the new item according to the ratio of the value of the purchased item subject (final invoice amount plus value added tax) to the other connected or combined items as at the time of connection or combination. Should the connection or combination be carried out in the manner such that the Customer's item is to be regarded as the principal item, it is hereby agreed that the (co-) ownership of the Customer in the integrated item shall pass to us in proportion to the value of our share in the item. The Customer shall store the relevant items for us free of charge with the care of an ordinary businessman. Should the goods created as a result of the connection or combination be resold, the advance assignment agreed to below shall apply only in an amount equivalent to the value of the goods subject to the retention of title.

3. The Customer may process and/or sell the goods subject to the retention of title during the ordinary course of business, provided the Customer is not in default. Pledges or transfer by way of security shall not be permitted. The Customer hereby assigns to us by way of security and in full (including value added tax) any receivables arising as a result of resale or for other legal grounds (insurance, tortious conduct) in relation to the goods subject to the retention of title (including any and all receivables on account (*Saldoforderungen*)) from the

current account). We hereby accept such assignment. Subject to revocation, we authorise the Customer to collect the receivables assigned to us for the Customer's account and in the Customer's name. However, the authorisation to collect such receivables may be revoked only if the Customer does not properly meet its payment obligations. In this event, we may demand that the Customer disclose to us the assigned receivables and the relevant debtors, provide any information required for collection thereof, furnish the associated documentation and notify the debtors of the assignment.

4. Should third parties interfere with the goods subject to the retention of title, the Customer shall indicate our title in the goods and notify such parties without undue delay. Moreover, the Customer shall also notify us in order that, where applicable, we may file a (third party) action against execution pursuant to § 771 of the German Code of Civil Procedure ("ZPO"). Should the third party be unable to reimburse us the judicial and extra-judicial costs of an action pursuant to § 771 ZPO, the Customer shall be liable for any loss incurred by us in this respect.

5. Should the Customer default in payment or should it culpably fail to meet other material contractual obligations, we may repossess the goods subject to the retention of title or, where applicable, demand assignment of the Customer's claims for possession against third

parties. Should we repossess the goods subject to the retention of title, this shall not constitute rescission of the contract, unless we expressly declare same.

6. Should the realisable value of the security exceed the receivables to be secured by 10%, (including any interest and ancillary costs), we shall, at the Customer's request and at our discretion, release security to this extent.

7. Should the foregoing provisions concerning the retention of title not operate to provide security in other nations in the same manner as in the Federal Republic of Germany, the Customer shall use its best efforts to create such security rights for B&S without undue delay. The Customer shall participate in any and all steps necessary and expedient for the validity and enforceability of such security rights.

§ 9 Prices, Payment

1. Unless agreed otherwise, in the event that a we make a binding offer (see § 2.1), we shall be bound to the prices stated in our offer for 90 (ninety) days from the date of the offer. The prices set forth in the order confirmation shall govern. Any additional goods and services shall be charged separately.

2. Our prices shall apply "ex-works" plus statutory value added tax as amended, but not including, however, transport packaging and

transport insurance. Our invoices shall be payable net (with no deductions) within 10 (ten) days of the invoice date.

3. Notwithstanding provisions of the Customer to the contrary, we may set off payments against older debts owed by the Customer. If costs and interest have already been incurred, we may set off the payment first against the costs, and then against the interest, and finally against the principal. The Customer shall be notified thereof.

4. Payment shall be deemed made only when we can dispose over the relevant amount. Cheques shall be accepted only as conditional payment and shall be deemed actual payment only after they have been redeemed.

5. Should the Customer default in payment, we may charge default interest in an amount 8 (eight) % above the base interest rate. Moreover, we may demand a reasonable fee for written notice letters.

6. Any and all receivables shall be due and payable immediately if the Customer defaults in payment, culpably fails to meet other material obligations under the contract or if we become aware of circumstances that could reduce the Customer's creditworthiness, in particular, cessation of payments or an application for or commencement of insolvency proceedings. In such cases, we may withhold outstanding deliveries or perform them only

against advance payment or the provision of security.

7. The Customer may set off or exercise a right of retention only if the counterclaims are confirmed in a final and binding judgment, or are not disputed. However, the Customer may always exercise a right of retention based on counterclaims under the same contractual relationship.

§ 10 Prohibition on Assignment

The assignment of claims against us to third parties is expressly excluded, unless we give our express advance written consent to such assignment. Where claims that generally may not be assigned pursuant to § 6 paragraph 7 of these Standard Terms and Conditions are not involved, such consent shall be granted if the Customer provides proof of material concerns that outweigh our interests in maintaining the prohibition on assignment.

§ 11 Confidentiality, Restriction on Use

The Customer agrees to keep confidential and not disclose to third parties any and all commercial and/or technical information and knowledge (know-how) of which it becomes aware or that is transmitted by us in connection with our deliveries or performance of the (specific) contract, and that is either marked "confidential" or (orally) identified as such or that, given its nature (taking into account the

legal concept of business and trade secrets), must be regarded as confidential, unless it enters the public domain or becomes easily accessible as a result of circumstances other than a contractual violation by the Customer. Moreover, the Customer shall not use the aforementioned information/knowledge for purposes outside the specific contract, in particular, shall not use such information/knowledge for the manufacture, use or distribution of products that compete with the specific contract products. The Customer shall impose equivalent obligations upon its employees and other persons who come into contact with the aforementioned information/knowledge in accordance with the provisions of the specific contract. The foregoing duties shall also survive termination or expiry of the specific contract.

§ 12 Miscellaneous

1. These Standard Terms and Conditions of Sale and Delivery and the entire legal relations between B&S and the Customer shall be governed by the laws of the Federal Republic of Germany. Application of the United Nations Convention on the International Sale of Goods ("CISG") or any other bilateral or multilateral treaties concerning the harmonisation of international sale of goods shall be excluded.

2. Place of performance for deliveries is our respective delivery site. Place of performance for payment is our company's registered office.

3. Forum for any and all disputes under or in connection with these Standard Purchasing Terms and Conditions and under the entire legal relations between B&S and the Supplier is Mannheim, provided the Supplier is a qualified merchant. B&S may, however, also bring proceedings against the Supplier at its general forum.

4. Should one or more of these Purchasing Terms and Conditions or provisions in legal transactions between B&S and the Supplier be or become invalid, the validity of the remaining provisions shall remain unaffected thereby.

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