

Notice: The following English version of the Terms and Conditions is for guidance only.
Legally binding is the German wording of the terms and conditions

Conditions of Payment and Delivery

BUDICH INTERNATIONAL GmbH

I. General:

1. Deliveries take place solely on the basis of the following Terms and Conditions of Delivery and Payment. We hereby expressly contradict conditions of purchase of the Ordering Party or any other limitations made by the Ordering Party.
2. Our offers are subject to change. Technical changes as well as changes to the form, colour, and/or weight are reserved within the scope of reasonability. Principally, only the product description of the manufacturer is agreed with regard to the characteristics of the goods. Public statements, praise, or advertisements of the manufacturer are not considered contractual information about the characteristics of the ordered goods.
3. By ordering the goods, the Customer declares in a binding manner a desire to acquire the ordered goods. We are entitled to accept the contractual offer at the basis of the order within two weeks of our receipt thereof. The acceptance may be declared either in writing or by delivery of the goods to the Ordering Party.
4. The conclusion of the Contract takes place with reservation of correct and timely delivery to us by our suppliers. This only applies in the event that we are not responsible for non-delivery, in particular in the event of the conclusion of a congruent covering transaction with our suppliers. The Customer will be informed that the performance is not available without delay. The money consideration will be refunded without delay.
5. Deviating or supplementary agreements, in particular agreements on the phone, agreements with representations, changes to our Conditions of Payment and Delivery, promises regarding the opportunities for processing and using our products etc. are not a component of the Contract, even if we are aware of them, unless their applicability has been expressly agreed in writing.

II. Delivery:

1. Delivery occurs free to door, i.e. the transfer of risk takes place upon handover to the Ordering Party.
2. Delivery periods are only binding if we have confirmed them in writing. Partial deliveries are allowed. They are to be paid separately in each case insofar as this is reasonable for the Ordering Party.
3. In the event of delivery arrears, the Ordering Party is to set a reasonable grace period – at least three weeks long. After fruitless expiry of the period, it is entitled to withdraw from the Contract for delivery.
4. In the event of a Force Majeure we are entitled to delay the delivery for the duration of the hindrance and a reasonable start up period. Operational disruptions, strikes, lock outs, and other circumstances for which we are not responsible that make it significantly more difficult or impossible for us to make the delivery for an on-going period of time or a shorter period of time have the same status as a Force Majeure, irrespective of whether they arise for us or at a subcontractor. The Ordering Party will be informed about the occurrence of the hindrance to delivery without delay. The Ordering Party can demand a declaration from us regarding whether we wish to withdraw from the Contract or make a delivery within a reasonable period of time. If we fail to make a declaration, the Ordering Party can withdraw from the Contract.
5. No. 4 does not apply to the extent that we can make the owed delivery or perform the owed service with application of the typical care or with a reasonable amount of effort despite the hindrances that are independent of our will.

6. Claims for damages on account of delivery arrears or the inability to deliver are excluded unless our legal representatives or agents are culpable of gross negligence or wilful acts. The same applies when they breach cardinal contractual duties in a slightly negligent manner.

III. Prices:

1. Our prices do not include value-added tax. VAT will be invoiced at the rate applicable at the time of delivery.
2. The risk of accidental loss or deterioration of the goods is transferred to the Ordering Party upon handover. Acceptance arrears on the part of the Ordering Party have the same status as handover.
3. Packaging and containers will not be taken back.
4. Should we make a general price increase or decrease between conclusion of the Contract and delivery, the new price valid on the day of delivery will be charged. In the event of a price increase, the Ordering Party is entitled to withdraw from the Contract within a period of two weeks after announcement thereof.

IV. Payment:

1. Payments are to be made immediately upon issuance of the invoice net cash in euros unless something else is agreed. Payment is to be made solely to us.
2. We are not obligated to accept bills of exchange.
3. We are entitled to credit incoming payments to older invoices even in the event of other instructions from the payer insofar as they have not been paid yet.
4. The Ordering Party is to pay interest in the amount of 8% points above the base rate during arrears. We retain the right to prove and claim higher damages on account of arrears.
5. In the event of unknown Ordering Parties, shipment via COD is allowed.
6. If Ordering Party is subject to compulsory execution or insolvency proceedings are initiated, we are entitled to withdraw from the Contract for delivery insofar as it has not been fulfilled yet or demand pre-payment for additional deliveries.
7. If we are entitled to demand damages on account of non-fulfilment of the Contract for delivery on account of non-fulfilment of the duties to pay, we can demand damages – with reservation of higher damages – in the amount of 25% of the invoice value for arising costs and lost profit plus a commission for our representation. The same applies if we can demand damages on account of non-fulfilment for another reason. It is incumbent upon the Ordering Party to prove that the damages did not arise or not in this amount.
8. Rights of retention or set off of counterclaims against our demands of all kinds from the Contract for delivery is not allowed unless the counterclaims are undisputed or have been established by court of law or due for a decision or their execution would be thwarted without admittance of the right to retention or set off.

V. Retention of Title:

1. Ownership of the goods is only transferred to the Ordering Party after it has fulfilled all of its duties towards us from the mutual business relationships.
2. The Ordering Party is obligated to store the goods subject to retention of title for us with care and insure them at its own expenses in an orderly manner against loss and damage. It hereby assigns its claims from the insurance policies to us in advance. Insofar as maintenance and inspection work is necessary, the Ordering Party is to carry it out regularly at its own expense.
3. The Ordering Party is obligated to inform us about third party seizures of the goods subject to retention of title, such as in the event of attachment, or any damage or destruction of the goods without delay. The Ordering Party is to report any change to the possessor of the goods as well as its own change in residence without delay.

4. In the event of actions in breach of contract on the part of the Ordering Party, in particular payment arrears or breach of a duty pursuant to no. 2 or 3., we are entitled to withdraw from the Contract and demand return of the goods subject to retention of title.
5. Finishing and processing of the goods by the Ordering Party always takes place in our name and by our order. Should processing or blending occur with other items that do not belong to us, we thereby acquire co-ownership of the new item in proportion of the invoiced value of the goods delivered by us to the other processed items. The Ordering Party does not obtain any claims against us on account of the processing or blending.
6. As long as the Ordering Party pays its debts to us in an orderly manner, it is entitled to sell and dispose of the goods subject to retention of title during the normal course of business. It is not allowed to pledge or assign them as a security or otherwise encumber them. In the event of further sale, the Ordering Party is to make transfer of ownership dependent on complete payment for the goods by its customer.
7. The Ordering Party already assigns all claims in the amount of the invoice that arise for it against a third party on account of the sale now. We accept the assignment. If the goods subject to retention of title are sold together with other items at a lump sum price, the assignment is limited to the proportionate amount of our invoice for the goods subject to retention of title included in the sale. If goods subject to retention of title are sold after processing with goods belonging to third parties, the assignment is limited to that part of the claim that corresponds to our share of ownership. The Ordering Party is to inform us of third parties seizures of the assigned claims without delay. As long as the Ordering Party fulfils its duties to pay in a timely manner, it is entitled to collect the claim arising from further sale itself. It is not authorized to pledge or assign them in any way.
8. If the realization of our claims appears to us to be threatened, the Ordering Party is to inform its customers upon request about the assignment and give us all necessary information and documents.
9. If the value of the securities to which we are entitled exceed the claims to be hedged against the Ordering Party by more than 20%, then we are obligated to release securities according to our choice to this extent upon request of the Ordering Party.

VI. Warranty Claims and Claims for Damages:

1. If the goods delivered by us are defective, we will offer a warranty in the form of rectification of defects or a replacement delivery.
2. If the supplementary performance fails, the Ordering Party principally has the choice of reduction of remuneration (reduction in price or damages) or rescission of the Contract (withdrawal). However, in the event of only minor lack of conformity, in particular in the event of only minor defects, the Ordering Party has no right to withdraw. If the Ordering Party chooses reimbursement for damages in the event of failed supplementary performance, the goods remain with the Ordering Party when this is reasonable for it. The damages are limited to the difference between the purchase price and the value of the defective item. This does not apply if we fraudulently caused the breach of contract.
3. If the Ordering Party chooses to withdraw from the Contract after failed supplementary performance on account of a defect of title or quality, it is not entitled to additional damages on account of the defect.
4. The Ordering Party is obligated to make written notice of obvious defects within a period of 14 days of receipt of the goods and, in doing so, send receipts, samples, packing slips, the invoice number, invoice date, and lettering on the packaging to us in writing; otherwise warranty claims are excluded. Timely dispatch is sufficient for complying with the time limit. The Ordering Party bears the full burden of proof for all preconditions for the claim, in particular concerning the defect itself, the time the defect is discovered, and the timeliness of the notice of defects.
5. Warranty claims are excluded if the Ordering Party has processed or sold the goods after discovering the defect or would have had to discover an obvious defect unless it proves that the processing or sale was necessary to prevent greater damage.

6. In the event of hidden defects, the written complaint must be made without delay, at the latest within two weeks of discovery of the defect.

VII. Limitations of Liability:

1. We are only liable if our legal representatives or agents are guilty of wilful intent or gross negligence. In the event of slightly negligent breaches of duty we are not liable if only non-material contractual duties were breached.
2. The above limitations of liability do not concern claims of the Ordering Party from product liability. Furthermore, the limitations of liability are not applicable in the event of damages to life, limb, or health of the Ordering Party for which we are responsible.

VIII. Time Barring:

Warranty claims or claims for damages of the Ordering Party on account of a defect become time barred one year after delivery of the goods. This does not apply if we can be accused of intention or gross negligence or in cases of damages to life, limb, or health of the Ordering Party for which we are responsible.

IX. Place of Fulfilment and Legal Venue; Validity Clause, Applicable Law:

1. Place of fulfilment for performances of the contractual partners and sole legal venue for all disputes from the Contract for delivery, also those from bills of exchange and cheques, is Hiddenhausen.
We also reserve the right to file suite at the registered office/residence of the Ordering Party.
2. Insofar as individual provisions of the Contract with the Ordering Party including these Conditions of Payment and Delivery be or become invalid in part or in whole, this shall not effect the validity of the remaining provisions. The regulation that is invalid in part or in whole shall be replaced by a regulation that comes as close as possible to the economic success of the invalid one.
3. The laws of the Federal Republic of Germany are applicable. The provisions of the CISG are not applicable.