

**General terms and conditions of sale, delivery and payment  
of Becker Aluminium-Service GmbH**

Status 01/2022

**§ 1  
General - Scope**

- (1) These Terms and Conditions of Sale, Delivery and Payment (hereinafter: "Conditions") shall apply to all contracts for deliveries and other services, including contracts for work and services and the delivery of non-fungible goods; we do not recognise the contractual partner's purchase conditions unless we have expressly agreed to their validity in text form. These Conditions shall also apply if we carry out the delivery to the customer without reservation.
- (2) These Conditions shall only apply to contracts with entrepreneurs, legal entities under public law and special funds under public law.
- (3) These Conditions shall also apply to all future contracts.

**§ 2  
Offer – order documents**

- (1) Our offers are non-binding and subject to change. Orders of the customer are only binding to us following our order confirmation in text form. The same applies to changes to orders. Verbal agreements, promises, assurances and guarantees made by our sales staff before the conclusion of the contract shall not be binding to us unless confirmed by us in text form.
- (2) We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents as well as samples. This shall apply in particular to such documents, which are designated as "confidential". The customer shall not be entitled to passing them on to third parties without our prior written consent.

**§ 3  
Prices - Payment**

- (1) Unless otherwise agreed, our prices shall be "ex works", excluding packaging; packaging costs shall be invoiced separately.
- (2) In the event our external expenses (duties, taxes or other third-party charges) included in the agreed price change or newly incur later than 4 weeks after the conclusion of the contract, we shall be authorised to modify the price accordingly with regard to the goods not yet delivered to the customer as of the beginning of each calendar month concerned. If the modified price surpasses the originally agreed price by more than 15 pct, the customer may, within one week after receipt of our price modification notice, withdraw from the contract with respect to the goods affected by the price modification.
- (3) The statutory value added tax is not included in our prices; it will be shown separately in the invoice at the statutory rate on the day of invoicing.
- (4) Any deduction of a cash discount shall be subject to a separate agreement in text form. Unless otherwise agreed, an agreed cash discount always relates to the invoice value excluding freight and is subject to the prior settlement of all our due receivables from the customer.
- (5) Unless otherwise stated in our order confirmation or invoice, the net purchase price is due for payment immediately after delivery. As regards any default in payment, the statutory rules shall apply.
- (6) The customer may retain or set off any counterclaims only in so far as such claims are undisputed or have become legally binding and as they are based on the same contractual relation with the customer and/or as they would entitle him to refuse the fulfilment his contractual duties under sec. 320 of the German Civil Code (BGB).

**§ 4  
Delay in delivery - Impossibility**

- (1) Any confirmation as to delivery times and dates shall be approximate only. Any such delivery period shall be subject to clarification of all details of the order and timely fulfilment of all obligations of the customer, such as the provision of letters of credit and guarantees or the making of down payments.

- (2) We shall be entitled to make partial deliveries at reasonable quantities.
- (3) Within a tolerance of 10 % of the total order quantity, we may exceed or fall below the agreed quantity.

## **§ 5**

### **Delivery obligation-Self-delivery reservation-Force majeure**

- (1) Our obligation to deliver is subject to our own correct, timely and contractual self-delivery, unless we are responsible for the non-contractual, deficient or late self-delivery. In particular, we are entitled to withdraw from the contract insofar as we have concluded a covering purchase but are not supplied by our supplier for reasons for which we are not responsible, e.g. in case of insolvency of our supplier.
- (2) In cases of force majeure and other impediments to performance that we are unable to foresee and for which we are not responsible - including industrial disputes, shortages of raw material, operational disruptions, transport impediments, official measures, pandemics and flood disasters and their effects - in each case also at our upstream suppliers - we shall be entitled to postpone delivery for the duration of the impediment to performance plus a reasonable start-up period. If, as a result of the aforementioned events, the agreed delivery date is exceeded by more than twelve weeks and the performance of the contract is thereby unreasonable for one of the contracting parties, the affected party shall be entitled to withdraw from the contract.

## **§ 6**

### **Transfer of risk, shipping, insurance**

- (1) Unless otherwise stated in our order confirmation, delivery shall be "ex works". The customer shall immediately call for delivery of those goods, which have been notified to him as ready for dispatch. Otherwise, we shall be entitled, upon reminder, to ship such goods at the customer's cost and risk or to store them at our discretion and to invoice them to the customer.
- (2) In all transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the customer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse or the manufacturer.
- (3) We provide insurance only on the instruction and at the expense of the customer.
- (4) The obligation and costs of unloading shall be borne by the customer.
- (5) Where the contract provides for continuous deliveries, the customer shall divide the quantities into approximately equal monthly shipments. Otherwise, we shall be entitled to specify them at our own fair and just discretion.
- (6) Unless otherwise agreed, call orders shall be processed within 365 days of the conclusion of the contract. After expiry of this period, we shall be entitled to store the goods not called off at the customer's expense and risk.

## **§ 7**

### **Liability for defects**

- (1) Any properties of the goods, in particular their grade, size and classification shall be primarily determined in accordance with the contractually agreed quality of the goods, in particular with any agreed DIN and EN standards or Data sheets or other agreed technical provisions. Any reference made to such standards and similar rules, to inspection documents according to EN 10204 and similar certificates as well as to grade, classification, size, measure and usability of the goods shall not constitute any warranties or guarantees. The same shall apply to declarations of conformity and similar markings such as CE and GS.
- (2) We shall not assume liability for the suitability of the goods for the use stipulated in the contract, unless expressly confirmed in text form.
- (3) Insofar as the goods have the agreed quality in accordance with para. (1) above or are suitable for the use assumed under the contract and confirmed by us in accordance with para (2) above, the customer is not entitled to invoke the goods may not be suitable for normal use or have a quality which is usual for goods of this type and which the customer expected. In this respect, our liability is excluded in accordance with section 8 of these Conditions.
- (4) As to the customer's obligations to examine the goods and to notify us of any defects, the applicable statutory provisions shall apply, subject to the following conditions:  
The customer shall examine the goods immediately after delivery with regard to the properties relevant for the use of the goods and shall notify us in text form of any defects of the goods immediately thereafter. In case the customer intends to install the goods into another object or

attach the goods to another object, the properties relevant for the installation or the attachment include the inner properties of the goods. The customer's obligation to examine the goods exists even in cases where an inspection certificate or any other material certificate is provided. Defects which, even upon most careful inspection, cannot be discovered immediately after delivery must be notified to us in text form immediately after their discovery.

In case the customer, in the event of an installation of the goods into another object or attachment of the goods to another object, fails to inspect the properties of the goods relevant for the designated end use at least at random prior to installation resp. attachment (e.g. by function tests or a trial installation), this represents a particularly grave disregard of the care required in the ordinary course of business (gross negligence) in relation to us. In such a case, the customer may assert any rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the goods.

- (5) If and in so far the customer's claim for defects is justified and has been made in time, we may, upon our choice, remedy the defect or deliver goods free of defects ("cure"). Place of performance for the cure is our seat. Should the cure fail or should we refuse it, the customer may exercise his statutory rights. In cases where the defect is trivial or where the goods have already been resold, processed or transformed, he may only reduce the purchase price.
- (6) In case the customer has installed the goods, in accordance with the goods' type and designated use, into another object or attached the goods to another object, he may claim reimbursement of his necessary costs for the dismantling of the defective goods and the installation or attachment of goods free from defects ("dismantling and installation costs") only in accordance with the following provisions:

Necessary dismantling and installation costs are only those, which directly result from the dismantling resp. removal of the defective goods and the installation resp. attachment of identical goods, have accrued on the basis of competitive market prices and have been proven by the customer by appropriate documents in text form.

Additional costs of the customer for consequential damages such as e.g. loss of profit, down time costs or additional costs for cover purchases are no dismantling and installation costs and therefore not recoverable under sec. 439 para. 3 of the German Civil Code (BGB). The same applies for sorting costs and for supplementary costs resulting from the fact that the sold and delivered goods are at a place other than the agreed place of delivery.

The customer is not entitled to request advance payments for dismantling and installations cost or other expenses required for the remedy of the defective delivery.

- (7) In case, on an individual basis, the costs incurred by the customer for the remedy of the defective delivery are disproportionate, namely with regard to the purchase price of the goods being free from defects and under consideration of the importance of the infringement of the contract, we are entitled to refuse the reimbursement of such costs. Disproportionate costs are especially given in case the costs requested by the customer, in particular dismantling and installation costs, exceed 150 % of the purchase price of the goods invoiced by us or 200 % of the value of the defective goods.
- (8) In accordance with section 8 of these Conditions, any additional claims are not acceptable. This applies in particular to claims for
  - damages which did not occur to the goods themselves (consequential damages);
  - costs of the customer related to the self-remedy of defects without the legal requirements being fulfilled; and
  - dismantling and installation costs, in case due to a transformation undertaken by the customer before the installation of the goods into another object or before attachment of the goods to another object, the installed or attached goods provide substantially different features than the original goods delivered by us or have been transformed to new products.

## **§ 8**

### **Limitation of liability**

- (1) We shall be liable in accordance with the statutory provisions insofar as the customer asserts claims for damages based on our wrongful intent or gross negligence, including wrongful intent or gross negligence on the part of our representatives or vicarious agents, in the case of gross negligence limited to the foreseeable, typically occurring damage. In all other respects, our liability, including for damage caused by defects and consequential damage, shall be excluded.
- (2) The above restrictions shall not apply in case of culpable breach of a material contractual obligation. Material are such specific contractual obligations, the breach of which endangers the achievement of the purpose of the contract, or such contractual obligations, the fulfilment of

which enables the proper execution of the contract in the first place and on the observance of which the contractual partner may regularly rely.

The restrictions above shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the German Product Liability Act (Produkthaftungsgesetz). Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

- (3) Should we default on a delivery or performance, the customer shall be entitled to damages due to this delay; in case of slight negligence, however, the claim of the customer shall be limited to a maximum of 10 % of the agreed purchase price for the performance in default. The rights of the customer for damages instead of performance in accordance with para. (1) and (2) above remain unaffected by the aforesaid.

## **§ 9**

### **Limitation period**

- (1) The limitation period for claims for defects is 12 months from delivery of the goods.
- (2) Any longer statutory periods shall remain unaffected by the limitation in para. (1) above, in particular
  - in case of a delivery recourse according to sec. 478, 479 of the German Civil Code (BGB);
  - for the defects in buildings/building materials specified in sec. 438 para. 1 no. 2; 634a para. 1 no. 2 BGB; and
  - in cases of injury to life, body or health, further in cases of wrongful intent or fraudulent intent or gross negligence by us, our legal representatives or our vicarious agents.

## **§ 10**

### **Retention of title**

- (1) We retain title to the delivered goods (reserved property) until settlement of all accounts arising from the business relationship with the customer (current account reservation). The current account reservation shall not apply in prepayment or delivery vs payment cases. The customer shall be obliged to take the required measures to maintain the retention of title - or a comparable security interest in the country of his seat or in the deviating country of destination – and, upon request, to provide us with evidence thereof.
- (2) The customer is obliged to treat the reserved property with care; in particular, he is obliged to insure them adequately at replacement value against fire, water and theft damage at his own expense. If maintenance and inspection work is required, the customer shall carry out such work in good time at his own expense.
- (3) The customer shall immediately inform us of any seizure or any other attachment of the reserved property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or removal of the reserved property, if and in so far as such costs are not borne by a third party.
- (4) The customer is entitled to resell the goods in the ordinary course of business; however, he already now assigns to us all claims in the amount of our invoice (including VAT), which accrue to him from the resale against his own customers or third parties, irrespective of whether the goods have been resold without or after processing. We hereby declare our acceptance of this assignment. The customer, however, shall remain entitled to collect this claim. Our right to collect the claim ourselves remains unaffected. However, we undertake not to collect the claim ourselves as long as the customer complies with his payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of composition or insolvency proceedings has been filed or payments have not been suspended. At our request, the customer is obliged to inform his own customers immediately of the assignment of his claims to us and to provide us with the documents required for collection. The processing or transformation of the goods shall always be carried out on our behalf as manufacturer within the meaning of sec. 950 of the German Civil Code (BGB), however without committing us in any way. If the goods are processed or combined with other goods, we shall acquire co-ownership of the new item in the ratio of the value of the goods (final invoice amount, including VAT) to the other processed goods at the time of processing. The processed goods shall be deemed to be goods subject to retention of title within the meaning of para. (1) above.
- (5) Should the customer default in payment or should he fail to honour a draft, we shall be entitled to take back the reserved property, to enter, for this purpose, the customer's premises and to sell the reserved property best possible by crediting the proceeds to the purchase price. The

same shall apply in case, after the conclusion of the contract, it should become evident that payment resulting from this contract or from other contracts is jeopardised by the customer's lack of ability to pay. If we take back the reserved property, this shall not be regarded as withdrawal from the contract. The statutory regulations of the German Insolvency Act (Insolvenzordnung) shall remain unaffected.

- (6) At the customer's request, we shall release any securities at our discretion, insofar as their value exceeds the claims to be secured by more than 10 %.

## **§ 11**

### **Place of jurisdiction - Place of performance - Miscellaneous**

- (1) The place of jurisdiction shall be Bönen / Germany. However, we shall also be entitled to sue the customer at any other general or special place of jurisdiction.
- (2) All legal relationships between us and the customer shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).
- (3) Unless otherwise stated in our order confirmation, the place of performance shall be our registered office located in Bönen / Germany.
- (4) In cases of doubt, the German version of these Conditions shall apply.