

## GENERAL CONDITIONS OF SALE AND DELIVERY of BUSSETTI & Co GmbH (shortened: BUSSETTI)

### I. APPLICABILITY

1. These General Terms and Conditions shall apply to all contracts for sales, for services, to supply and service business of BUSSETTI & Co GmbH (shortened: BUSSETTI). Our additional conditions for other types of services, e.g. assembly work, shall apply to those kinds of services accomplished by us. Offers as well as all our services – including current follow-up orders – shall solely be subject to these General Terms and Conditions effective.

2. Diverging provisions, for example contradictory terms and conditions of business partners, verbal agreements, shall only be valid if expressly agreed upon in writing by BUSSETTI when the contract is concluded. BUSSETTI's silence to notwithstanding any other provisions to the contrary – including correspondence – shall in no case constitute or be deemed to constitute the approval or consent of BUSSETTI.

3. If BUSSETTI accepts delivery, the customer also accepts these General Conditions of Sale and Delivery.

4. These General Conditions of Sale and Delivery shall apply to the entire term of the business relationship including follow-up orders. The first receipt of these General Conditions of Sale and Delivery shall suffice.

### II. SIGNING OF THE CONTRACT, OFFERS

1. Orders require – unless they do not refer to a concrete offer of BUSSETTI and do not diverge from such offer – the written acceptance of BUSSETTI.

2. Notwithstanding para 1 the contract shall be effective, if BUSSETTI has provided deliveries or services upon receipt of orders.

3. In any case customers shall be bound to their offer (order) for a period of four weeks (unless a customer expressly provides in writing for a shorter time period); however, if BUSSETTI rejects the customer's written order, the obligation becomes ineffective.

4. Any offer of BUSSETTI is – provided that nothing is stipulated in written form to the contrary – to its entire content subject to change and non-binding. Goods of BUSSETTI are subject to prior sale. Documents that are part of the offer (e.g. specification, material safety data sheet, certification of analysis, drawings, weight specifications, illustrations) shall only be roughly decisive, as far as they are not expressly referred to as binding.

5. Products of BUSSETTI presented on the Internet, do not constitute a binding offer but an invitation to the customer to make an offer. The confirmation of the

receipt of an online order placed by a customer does not constitute an acceptance.

6. Possible regulatory approvals required and orders relating to the construction, assembly, accident prevention and the like, shall be obtained and observed, respectively, by the customer; they shall not constitute a pre-condition in relation to the execution of the contract. If such regulatory approvals are needed for deliveries, they shall be provided to BUSSETTI in due time.

### III. PRICES, PAYMENT

1. The generally applicable prices of BUSSETTI at the time of delivery or the agreed prices plus V.A.T. (in the applicable statutory amount) shall apply.

2. When issuing an invoice, BUSSETTI shall have the right to reduce or increase any outstanding amount (of a purchase price) calculated in a foreign currency so that the amount outstanding in the invoice equals the counter value in EURO, calculated based on the foreign currency payable either at the time of signing of the contract or at the time of delivery, at BUSSETTI option.

3. In cases of deliveries according to weight the relevant verification of the weight as basis for the calculation takes place at the forwarding office of BUSSETTI.

4. If in cases of deliveries to customers of a member state of the European Union no V.A.T. has to be charged, the customer shall provide the supporting documents at BUSSETTI's request which are needed according to law in order to prove tax exemption towards tax authorities.

5. Unless provided otherwise in written form, payment for the deliveries or services of BUSSETTI shall be due within 14 days after invoicing, however, no later than 14 days following the receipt of the delivery or service. Payments shall only be considered as effected if the amount due is received by BUSSETTI or its bank account without any deductions whatsoever. Checks and bills will only be accepted if expressly agreed and, if so, for account only. Discount and collection charges shall be borne by the customer. In case of late payment BUSSETTI shall be entitled to charge interest for delay in the amount of 5 % above the interest rate charged by Austrian major banks for working capital credits.

6. BUSSETTI reserves the right to use payments to settle the eldest invoice item plus the accrued interest for delay and costs, namely in the following order: costs, interests, principal claim.

7. Customers shall neither be entitled to offset any counterclaims nor do customers have rights of retention and rights to refuse performance.

8. In cases of default the customer shall reimburse all costs of BUSSETTI for reminders for overdue payments and all legal measures including lawyers' fees relating to all necessary steps taken which precede a law suit, such lawyers' fees to be calculated according the lawyer's tariff.

9. BUSSETTI shall not be obliged to fulfil its obligations towards a customer if such customer does not meet his obligations as agreed, in particular, if the customer does not pay due invoices in whole or in part.

10. If a customer is in default with a payment in whole or in part, if a check or a bill is not honoured or if BUSSETTI receives information which provides that it is critical to grant credit to such customer, if an application to institute insolvency proceedings is filed or if a customer proposes an extrajudicial scheme of arrangement to a creditor, BUSSETTI shall be entitled to demand immediate payment of all outstanding debts, even if undue or deferred, and to demand up-front payment for all outstanding deliveries and services.

#### **IV. DELIVERIES, DELIVERY TIMES, DELAYED DELIVERY, DISPATCH, RISK TAKING**

1. The extent of deliveries depends on the sales confirmation of BUSSETTI. BUSSETTI shall be entitled to partial delivery and partial invoicing.

2. Delivery times indicated or agreed shall, to the extent possible, be complied with but shall not be binding; unless the binding character is expressly guaranteed in written form.

3. Force majeure in every respect, disruption of operations or traffic congestions, fire loss, floodings, shortage of labour, energy, raw materials, auxiliary material, strike, lockout, failure of dispatch, official directives or other obstacles which prevent, delay, reduce or make manufacturing, dispatch, acceptance or consumption unacceptable, release BUSSETTI to the extent from the obligation to deliver and of acceptance during such period of failure. If due to such failures the period of delivery and/ or acceptances exceeds more than eight weeks, both parties shall be entitled to rescind the contract. In case of loss of its resources, in whole or in part, BUSSETTI shall not be obliged to stock up with external sub-suppliers. If so BUSSETTI shall be entitled to distribute the available quantity of goods considering its own requirements.

#### **V. TRANSFER OF RISK**

1. The risk of loss is transferred to the customer when the delivery item leaves the works or distributing warehouse of BUSSETTI. If dispatch or delivery is delayed due to reasons for which BUSSETTI is not liable, risk of loss shall be transferred to the customer from readiness for acceptance or dispatch.

#### **VI. WARRENTY, COMPENSATION**

1. The period of warranty shall be - unless otherwise agreed in writing - six months for movables and two years for immovable objects following the transfer of risk. BUSSETTI shall be liable for professional compliance with state-of-the-art technologies and the

quality of the materials used. Customary minor or technically not avoidable deviations of quality, shape, colour, weight or equipment are not considered as a defect and are, therefore, not subject to any objection. That also applies to deliveries on sample or trial.

2. Claims shall only be considered, if raised immediately and in written form by transmitting samples and documents, such as packing slips if possible, stating invoice number, invoice date and the marking found on top of the packing and in any event by stating the exact description of the defect.

3. BUSSETTI shall not be obliged to verify whether preceding performances of the customer or third parties were proper and shall, in any case, not be liable for unknown improper preliminary works of the customer or third parties and damages resulting therefrom.

4. BUSSETTI has the right to either improve or replace defects at its own option. If improvement or replacement finally fails or is not carried out within a reasonable period of time, at least within thirty days, the customer shall be entitled to choose redhibitory action or reduction of the purchase price.

5. The customer shall be entitled to retain the amount necessary for the rectification of the defect until such defect is cured. The remainder is not suspended because of the defect present.

6. The obligation of BUSSETTI to pay damages – for any legal reason whatsoever – shall be limited to the amount set forth in the invoice for the quantity of goods involved in this claim. It is imperative that damages may only be claimed in cases of intent or gross negligence of BUSSETTI.

7. The statutory presumption according to § 924 2<sup>nd</sup> sentence ABGB shall not apply.

8. In deviation from the provisions set forth above, for parts not produced by BUSSETTI, BUSSETTI shall only have a warranty performance obligation or be liable for damages if BUSSETTI itself is entitled to warranty claims and claims for damages towards the sub-suppliers. BUSSETTI shall be entitled to release itself from its obligations by offering to assign its rights towards the sub-suppliers to the customer.

9. BUSSETTI and the customer agree that possible provisions in favour of third parties shall be excluded. Therefore, the customer shall indemnify and hold BUSSETTI harmless in respect of claims of third parties which are based on such protective effects.

10. If the customer intends to hold BUSSETTI liable for product liability, such claims need to be notified within three weeks from receipt of knowledge, if legal measures are taken without delay, to BUSSETTI, in doing so the facts that underlie the claims shall be specified in detail. The customer loses his right of recovery if he fails to do so.

11. The liability for property damages which are caused by deficient products shall be excluded. Property damages incurred by a consumer are excluded from this disclaimer of warranty. The customer shall be obliged to transfer this disclaimer of warranty to his legal successor with the obligation to pass the disclaimer of warranty to the respective successor.

12. The customer expressly waives all further claims towards BUSSETTI, especially because of possible subsequent damages.

#### VII. ADVICE FOR APPLICATION

1. The application, usage and processing of the products purchased are the sole responsibility of the customer. Advice in word and in writing for application provided by BUSSETTI shall be non-binding, also in relation to possible provisions in favour of third parties, and does not release the customer of its obligation to verify whether the products are appropriate for the processes and purposes intended. The application, usage and processing of the products are carried out beyond the possibility to control by BUSSETTI and, therefore, are the sole responsibility of the customer.

#### VIII. RETENTION OF TITLE

1. The goods shall remain the property of BUSSETTI until full payment of all claims – including additional claims, claims for damages, encashment of checks and discharge of bills – has been effected.

2. Reservation of property rights shall also continue if individual claims of BUSSETTI are included in a current account and balances are stroke and approved.

3. The customer shall be entitled to process and resell the goods according to the following provisions: The customer's rights, in the course of proper business operations in relation to the retained goods,

a) of processing, ends with the cessation of payment by the customer or with the institution of bankruptcy proceedings or settlement system.

b) By processing the retained goods the customer does not gain ownership of the new goods. Processing is carried out for BUSSETTI without assuming any liabilities. If the goods are processed, mixed or blended with other objects, BUSSETTI acquires joint ownership of the new object in proportion to the worth of the retained goods to the total value of the object.

c) The customer is obligated to inform BUSSETTI of secondary purchases in advance and offers to BUSSETTI the assignment of the claims resulting from the secondary purchase with all ancillary rights, namely in proportion and also insofar as the goods are processed, mixed or blended and BUSSETTI has acquired joint ownership on them in the amount of the value set forth in the commercial invoices. In the latter case BUSSETTI shall be entitled to the corresponding fractional amount of the purchase price under this assignment in proportion of the value set forth in the commercial invoices of the retained goods to the value set forth in the commercial invoices of the object. If the customer has sold the claim in connection with old-line-

factoring, the super ceding claim against the factor shall be assigned to BUSSETTI. BUSSETTI accepts this assignment.

d) BUSSETTI will not collect the claim assigned while the customer fulfils its obligations to pay. In case of late payment BUSSETTI shall be irrevocably authorised by the customer to inform the sub purchasers of the assignment and collect the claims. At BUSSETTI request the customer shall be obliged to hand over a detailed record of the claims that BUSSETTI is entitled to, containing the names, addresses of the sub purchasers, the amount of the individual claim, invoice date, et cetera and to provide BUSSETTI with the relevant information necessary to assert the assigned claims and to permit the examination of the information.

e) Pledging or transfer by way of security of the retained goods / assigned claims shall be prohibited. BUSSETTI shall be immediately informed of garnishments stating the lienor.

f) If BUSSETTI takes back delivery items due to the retention of title, this shall not be considered a rescission of the contract. BUSSETTI shall be entitled to settle its claims out of the retained goods taken back by means of out of court sale at market or estimated price. In doing so the customer shall have the possibility to suggest a better realisation within a reasonable period of time.

g) The customer shall store the retained goods for BUSSETTI free of charge. The customer shall be obliged to procure an insurance against ordinary risks such as fire, burglary and water to the usual extent. The customer hereby assigns to BUSSETTI his indemnity claims resulting from damages as aforementioned against insurance companies or other obligors in the amount of such claims. BUSSETTI accepts this assignment.

h) All claims as well as rights resulting from retention of title of the special forms stipulated in compliance with these terms shall persist, until total release, as contingent liabilities which BUSSETTI enters into on behalf of the customer in connection with the object of purchase.

#### IX. RESCISSION

1. If BUSSETTI shall be informed of circumstances that question the creditworthiness of the customer in the amount of the order after conclusion of the contract, BUSSETTI shall be entitled to withdraw from the contract without period of grace and to claim damages due to non-performance. Agreed delivery times shall be interrupted promptly upon notice of the lacking creditworthiness.

#### BANKVERBINDUNGEN

BA-CA 0045-12166/00 (BLZ 12000 AT691100000451216600 BKAUATWW)

BAWAG 01710786239 (BLZ 14000 AT171400001710786239 BAWAATWW)

ERSTE 000-09008 (BLZ 20111) / SPARKASSE in WELS 10200-013191 (BLZ 20320) / OBERBANK 045-10048/65 (BLZ 15150)

HVB MÜNCHEN 15209008 (BLZ 70020270 DE03700202700015209008 HYVEDEMM)

FB-Nr. 271469w, Gerichtsstand Wien / UID-Nr: ATU 62155036, DVR: 0062120 St.Nr. FA06 132/0172

## **X. PLACE OF PERFORMANCE, JURISDICTION, APPLICABILITY**

1. For all agreements between the customer and BUSSETTI Austrian Law with exception of the rules of conflict of laws shall be applicable.
2. Place of performance for delivery shall be, unless another place of performance is determined in writing, BUSSETTI's works which provides the goods. Place of exclusive jurisdiction shall be Vienna.
3. In the event that a clause in these General Conditions of Sale and Delivery is, in whole or in part, invalid, this shall not affect the validity of the remaining clauses / remaining parts of such clauses. Any invalid provision shall be replaced by an effective provision which conforms, to the extent possible, with the economic purpose of the individual clause.

## **XI. MISCELLANEOUS**

1. Several contracting parties shall be jointly liable towards BUSSETTI.
2. Property and copy rights in and relating to these estimates, drawings, illustrations and documents and the like shall remain with BUSSETTI; they may only be made available to third parties upon approval by BUSSETTI. They shall be returned immediately at any time at BUSSETTI's request.
3. In context of non-disclosure the contracting parties shall be obliged to keep all information and documents received from the other contracting party confidential.

Vienna, August 2016