

General Terms and Conditions of b-drives GmbH

§ 1 Scope of application, form

(1) These General Terms and Conditions (GTC) apply to all our business relationships with our customers ('buyers'). The GTC only apply if the buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

(2) The GTC shall apply in particular to contracts for the sale and/or delivery of movable items ('goods'), regardless of whether we manufacture the goods ourselves or purchase them from suppliers (Sections 433, 651 BGB). Unless otherwise agreed, the GTC shall apply

in the version valid at the time of the buyer's order or, in any case, in the version last provided to the buyer in

version last provided to him in text form, as a framework agreement for similar future contracts, without our having to refer to them again in each individual case.

(3) Our GTC shall apply exclusively. Any differing, conflicting or supplementary general terms and conditions of the buyer shall only and insofar become part of the contract if we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if we are aware of the Buyer's general terms and conditions and carry out the delivery to him without reservation.

(4) Individual agreements made with the Buyer in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these GTC.

Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements

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(5) Legally relevant declarations and notifications of the buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or

text form (e.g. letter, email, fax). Legal formal requirements and further

proof, in particular in the event of doubt as to the legitimacy of the declaring party, shall remain unaffected.

(6) References to the validity of statutory provisions are for the purposes of clarification only. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly modified or expressly excluded in these GTC.

§ 2 Conclusion of the contract

(1) Our offers are subject to change and non-binding. This also applies if we have provided the buyer

with catalogues, technical documentation (e.g. drawings, plans, calculations, estimates, references to DIN standards), other product descriptions or documents – including in electronic form – to which we reserve ownership and copyrights.

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(2) The order of the goods by the buyer is considered a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept this offer of contract within 3 weeks of its receipt by us.

(3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.

§ 3 Delivery period and default in delivery

(1) The delivery period shall be agreed individually or stated by us upon acceptance of the order

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(2) If we are unable to comply with binding delivery periods for reasons for which we are not responsible

(non-availability of the service), we shall inform the buyer of this

without delay and at the same time notify the buyer of the expected new delivery period. If the performance is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or

in part; we will immediately refund any consideration already provided by the buyer.

In this sense, a case of non-availability of performance

shall be deemed to exist in particular if our suppliers fail to deliver to us on time, if we

have concluded a congruent hedging transaction, if neither we nor our suppliers

is at fault or we are not obliged to procure in an individual case.

(3) The occurrence of our default in delivery shall be determined in accordance with the statutory provisions. In

any case, however, a reminder from the buyer is required. If we are in default of delivery,

the buyer may demand liquidated damages for the default. The

liquidated damages shall amount to 0.5% of the

net price (delivery value), but not more than 5% of the delivery value of the

delivered goods. We reserve the right to prove that the buyer has not incurred any damage at all

or only a significantly lower damage than the above flat rate.

(4) The rights of the buyer in accordance with § 8 of these terms and conditions and our legal rights,

particularly in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

(5) Delays in delivery and performance due to force majeure, important operational

concerns and due to events whose causes lie outside our

sphere of influence shall entitle us to postpone the delivery or performance for the duration

of the hindrance plus a reasonable start-up time. This also applies

if such events occur at our suppliers or during an already

existing delay. If the hindrance lasts longer than 3 months, the

purchaser as well as we are entitled to withdraw from the contract with regard to the unfulfilled part of the contract

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. We will notify the buyer of the beginning and end of such hindrances

as soon as possible.

§ 4 Delivery, Transfer of Risk, Acceptance, Default in Acceptance

(1) Delivery is ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the buyer's request and expense, the goods will be shipped to a different

destination (sale to destination) Unless otherwise agreed,

we are entitled to determine the type of shipment (in particular transport company, shipping route,

packaging) itself.

(2) The risk of accidental loss and accidental deterioration of the goods

passes to the buyer at the latest when the goods are handed over. However, in the case of sale to destination, the

risk of accidental loss and accidental deterioration of the goods as well as the

risk of delay already passes to the buyer when the goods are handed over to the carrier, freight forwarder

or other person or institution designated to carry out the shipment. Insofar as

acceptance has been agreed, this is decisive for the transfer of risk. In all other respects,

the statutory provisions of the law on contracts for work and services shall apply accordingly.

If the buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance

(3) If the buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses

(e.g. storage costs). For this, we charge a flat-rate compensation in the amount of 0.5% of the delivery value per calendar week up to a maximum total of 5% or 10% in the event of final non-acceptance, starting with the delivery period or – in the absence of a delivery period – with the notification that the goods are ready for dispatch.

The right to prove greater damage and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected;

however, the lump sum is to be offset against further monetary claims. The buyer is entitled to prove that we have incurred no damage at all or only significantly less damage than the above lump sum.

§ 5 Prices and payment terms

(1) Unless otherwise agreed in individual cases, our prices at the time of conclusion of the contract apply, ex warehouse, plus statutory sales tax.

(2) In the case of mail order purchases (§ 4 para. 1), the buyer bears the transport costs ex warehouse.

Any customs duties, fees, taxes and other public charges shall be borne by the buyer.

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(3) The purchase price is due and payable within 14 days of the invoice date and delivery or acceptance of the goods. However, we are entitled, even in the context of an ongoing business relationship, at any time to make a delivery in whole or in part only against advance payment. We will declare a corresponding reservation at the latest with the order confirmation.

(4) Upon expiry of the above payment period, the buyer shall be in default. Interest shall be paid on the purchase price

during the period of default at the statutory default interest rate applicable at the time. We reserve the right to claim further damages for default.

Our claim for commercial interest after the due date remains unaffected (§ 353 HGB)

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(5) The buyer shall only be entitled to rights of set-off or retention to the extent that its claim has been legally established or is undisputed. In the event of defects in the delivery, the countervailing rights of the buyer, in particular in accordance with § 7 (6) sentence 2 of these GTC, shall remain unaffected.

(6) If, after the conclusion of the contract, it becomes apparent (e.g. through an application for the opening of

insolvency proceedings) that our claim to the purchase price is at risk due to the

Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the

regarding the dispensability of setting a deadline shall remain unaffected.

§ 6 Retention of title

(1) We shall retain title to the goods sold until all our current and future claims under the purchase contract and an ongoing business relationship (secured claims) have been paid in full.

(2) The goods subject to retention of title may not be

secured claims, nor may they be pledged to third parties or assigned as security.

The buyer must notify us immediately in writing if an application is made to open

insolvency proceedings or if third parties seize (e.g. attach) the goods belonging to us

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(3) If the buyer acts in breach of contract, in particular if the buyer fails to pay the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions

and/or to demand the return of the goods on the basis of the retention of title.

The demand for surrender does not at the same time include the declaration of withdrawal; we are

rather entitled to demand only the surrender of the goods and to reserve the right of withdrawal.

If the buyer does not pay the due purchase price, we may only

if we have previously set the buyer a reasonable deadline for payment without success

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or if setting such a deadline is not required by law

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(4) Until further notice in accordance with (c) below, the buyer is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business processed. In this case, the following provisions shall apply in addition.

(a) The retention of title extends to the full value of the products resulting from the processing, mixing or

combining of our goods, whereby we are considered to be the

manufacturer. If, in the event of processing, mixing or combining with goods, the ownership rights of

third parties remain in effect, we shall acquire co-ownership in proportion to the

invoiced values of the processed, mixed or combined goods. Otherwise,

the same applies to the resulting product as to the goods delivered under retention of title.

(b) The buyer hereby assigns to us, as security, the claims against third parties arising from the resale of the goods or products,

either in total or in the amount of our possible

co-ownership share in accordance with the previous paragraph. We accept the

assignment. The obligations of the buyer mentioned in paragraph 2 also apply in view of the assigned claims.

(c) The buyer remains authorised to collect the claim alongside us. We undertake

not to collect the claim as long as the buyer meets his payment obligations to us,

there is no lack of his ability to pay and we

reservation of title by exercising a right in accordance with paragraph 3. If this

is the case, however, we can demand that the buyer informs us of the assigned claims

and their debtors, provides all the information necessary for collection,

hands over the relevant documents and notifies the debtors (third parties) of the assignment.

In addition, we shall be entitled in this case to revoke the buyer's authorisation to further

sell and process the goods subject to retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%,

we shall release securities of our choice at the buyer's request.

§ 7 Claims for defects of the buyer

(1) The statutory provisions shall apply to the rights of the buyer in the event of material defects and defects of title (including incorrect and

short delivery as well as improper assembly or defective assembly instructions)

on the part of the seller, unless otherwise specified below.

In all cases, the statutory special provisions for final delivery of the goods to a consumer (supplier recourse according to §§ 478, 479 BGB).

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(2) The basis of our liability for defects is, above all, the agreement on the quality of the goods.

All product descriptions that are the subject of the individual contract or that we (in particular in catalogues or on our Internet homepage)

(3) Insofar as the nature has not been agreed, the statutory regulation is to assess whether there is a defect or not (§ 434 para. 1 p. 2 and 3 BGB). For public statements by the manufacturer or other third parties (e.g. advertising statements), we have no liability.

(4) The buyer's claims for defects presuppose, in addition to proper use, that he has fulfilled his statutory obligations to inspect and give notice of defects (Sections 377, 381 of the German Commercial Code (HGB)).

If a defect becomes apparent upon delivery, inspection or at any later point in time, we must be notified of this in writing without delay.

In any case, obvious defects must be reported to us in writing within five working days of delivery and, in the case of

defects not recognisable during the inspection, within the same period of time after their discovery.

If the buyer fails to carry out a proper inspection and/or report defects, our liability for the defect not reported, not reported in time or not properly reported is excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, we may initially choose whether we will provide subsequent performance

by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected. This applies in particular in the event of disproportionate costs.

(6) We are entitled to make the subsequent performance dependent on the customer paying the due purchase price. However, the customer is entitled to withhold a reasonable part of the purchase price in proportion to the defect.

(7) The customer must give us the time and opportunity necessary for the subsequent performance owed,

in particular to hand over the goods complained about for inspection purposes. In the event of replacement delivery, the buyer shall return the defective item to us in accordance with the statutory provisions.

(8) The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, shall be borne by us if there is actually a defect. Otherwise, we may demand that the buyer reimburse us for the costs incurred as a result of the unjustified demand for rectification of defects (in particular inspection and transport costs) incurred by the unjustified request for the rectification of defects, unless the lack of defectiveness was not recognisable to the purchaser.

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(9) In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the purchaser has the right to rectify the defect himself and demand compensation from us for the expenses objectively required for this. We are to be notified immediately, if possible in advance, of any such self-remedy.

The right of self-remedy does not exist if we would have been entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(10) If the subsequent performance has failed or a reasonable deadline to be set by the buyer for the subsequent performance

has set a reasonable deadline for the subsequent performance, or if the deadline has expired without success, or if it is not required by law,

the buyer may withdraw from the purchase contract or reduce the purchase price. In the event of

an insignificant defect, however, there is no right of withdrawal.

(11) Claims of the buyer for damages or reimbursement of wasted expenditure exist only in accordance with § 8, even in the case of defects, and are otherwise excluded.

§ 8 Other liability

(1) Unless otherwise provided for in these GTC, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damages – regardless of the legal basis – within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to a milder standard of liability in accordance with statutory provisions,

(e.g. for diligence in our own affairs) only

a) for damages resulting from injury to life, limb or health,

b) for damages resulting from the not insignificant breach of an essential contractual obligation

(an obligation whose fulfilment is essential for the proper execution of the contract

and on whose compliance the contractual partner regularly relies and

trusts); in this case, however, our liability is limited to compensation for foreseeable,

typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 also apply to

breaches of duty by or in favour of persons for whose fault we are

legally responsible. They do not apply if we have

maliciously concealed or if we have assumed a guarantee for the quality of the goods

and for claims of the buyer under the Product Liability Act.

(4) The buyer can only withdraw or terminate the contract due to a breach of duty that does not consist of a defect

withdraw or terminate the contract if we are responsible for the breach of duty. An unrestricted

right of termination on the part of the buyer (in particular in accordance with §§ 651, 649 BGB) is excluded. In

all other respects, the statutory requirements and legal consequences shall apply.

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§ 9 Limitation

(1) Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for

claims arising from material defects and defects of title is one year from delivery. Insofar as acceptance has

been agreed, the limitation period begins with acceptance.

(2) However, if the goods are a building or an item that

has been used for a building in accordance with its usual purpose and has caused the building to be

defective (building material), the limitation period shall be

5 years from delivery in accordance with the statutory regulation (Section 438 (1) No. 2 BGB).

also further special statutory provisions on the statute of limitations (in particular § 438 para. 1 no. 1,

para. 3, §§ 444, 479 BGB).

(3) The above limitation periods of the law governing sales shall also apply to contractual and non-contractual claims for damages of the buyer, which are based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the purchaser in accordance with § 8 (2) sentences 1 and 2 (a) and under the Product Liability Act shall, however, become time-barred exclusively in accordance with the statutory limitation periods.

§ 10 Choice of law and place of jurisdiction

(1) These GTC and the contractual relationship between us and the buyer shall be governed by the laws

of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public

or a special fund under public law, the exclusive – and also

international – place of jurisdiction for all disputes arising directly or

indirectly from the contractual relationship is our place of business in Norderstedt. The same applies if

the buyer is an entrepreneur within the meaning of § 14 BGB. However, we are also entitled in all cases

to take legal action at the place of performance of the delivery obligation in accordance with these terms and conditions or a

prior individual agreement or at the general place of jurisdiction of the buyer.

Overriding statutory provisions, in particular on exclusive jurisdiction,

remain unaffected.

b-drives GmbH

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