

**General Sales, Delivery and Payment Terms and Conditions**  
**BKS GmbH, D-42502 Velbert**  
**(Edition: June 2018)**

**1. General / Scope of Application**

- 1.1 Our Sales Terms and Conditions are exclusively applicable; we do not recognise contrary terms and conditions by the Purchaser or terms and conditions deviating from our Sales Terms and Conditions unless they have been explicitly approved by us. Our Sales Terms and Conditions shall be applicable even if we carry out delivery to the Purchaser without reservation and with the knowledge of contrary terms and conditions of the Purchaser or terms and conditions of the Purchaser deviating from our Sales Terms and Conditions.
- 1.2 For the online shop, primarily the "Additional General Terms and Conditions for the Online Shop" shall be valid.
- 1.3 All agreements made between us and the Purchaser in view of performance of the present contract have been stipulated in the present contract.
- 1.4 Our Sales Terms and Conditions are only valid vis-à-vis a contractor within the meaning of § 14 BGB [German Civil Code], legal entities under public law or a special fund under public law.
- 1.5 Our Sales Terms and Conditions shall also be valid for subsequent orders. For current and future business relations the Sales Terms and Conditions shall be valid as framework terms and conditions even if not explicitly agreed upon in future.
- 1.6 In addition to the General Terms and Conditions our "Installation guidelines", "Installation Instructions", "Product Information" as well as the technical data sheets shall be valid.

**2. Offer / Offer Documentation**

- 2.1 Our offer is subject to alterations unless otherwise specified in an order confirmation. Insofar as an order confirmation is sent, such order confirmation is authoritative for the content of the contract.
- 2.2 Warranty of a quality or acceptance of an independent guarantee on contract conclusion moreover must be explicitly identified in writing accordingly.
- 2.3 Subsequent modifications of the contract contents must also be made in writing.
- 2.4 We reserve property rights and copyrights in illustrations, drawings, calculations and other documents; they must not be made available to third parties. This is especially applicable to such written documents identified as being "confidential". Prior to their transmittal to third parties, the Purchaser requires our explicit written approval.

**3. Prices / Payment Terms and Conditions**

- 3.1 Unless otherwise specified in the order confirmation, our prices are to be understood "ex works" excluding packing and transport charges, insurance and other contingencies; these shall be invoiced separately.  
In the event that the goods are not supposed to be delivered within four months after contract conclusion, we reserve the right to reasonably adjust our prices, if modifications occur after contract conclusion due to labour agreements or the like. We shall prove these modifications to the Purchaser on request. If changes in excess of 5% compared with the original price result, the Purchaser is entitled to withdraw from contract.
- 3.2 For pieces/parts which are produced on a special demand of the Purchaser, the Purchaser is informed on the production quantity by us. The Purchaser engages itself to take the quantities which have been confirmed to it.
- 3.3 Statutory value-added tax is not included in our prices; it will be shown separately on the invoice on the day of invoicing in the amount stipulated by law.

- 3.4 Discount deduction requires a special written agreement. Independent of such a written agreement it is stipulated that a discount of 3 % on the invoice value shall be granted, if payment is received within 10 days as from date of invoice. Otherwise, payment of the invoice amount shall be due within 30 days as from date of invoice without any deduction. No discount will be granted on new invoices as long as still open balances from former invoices exist. Payments will always be used for settlement of the oldest debit item.
- 3.5 The Purchaser defaults without a reminder, if it does not comply with the payment term according to Clause 3.4.
- 3.6 The Purchaser shall only be entitled to setoff rights, if its counterclaims have legal force, are undisputed or have been recognised by us. If the Purchaser puts forward notices of defect, the Purchaser shall be allowed to withhold payments which are in reasonable proportion to the redhibitory defects occurred.  
The Purchaser shall be entitled to exercise a general lien insofar as his counterclaim is based upon the same contractual relationship.
- 3.7 Payment by bills of exchange or cheques is not possible and does not constitute payment in accordance with the contract.

#### **4. Delivery**

- 4.1 Generally, no delivery dates are specified by us. In our communications, dates of shipment, i.e. dates when the goods are handed over to the forwarding agent or to a transport person are specified. Further delivery dates are not specified but must be calculated by the customer itself due to the - anticipated - date of shipment specified. If delivery dates are specified by us nevertheless, this requires clarification of all technical questions. Moreover, dates (dates of shipment or delivery dates) specified by us are generally non-binding and only constitute an anticipated date.
- 4.2 Moreover, observance of our delivery obligation requires timely and orderly fulfilment of the Purchaser's obligations, especially observance of the agreed upon payment terms and conditions. The defence of lack of performance of the contract remains reserved. This right also exists for not entirely fulfilled obligations from former deliveries.
- 4.3 If the Purchaser is in default of acceptance or if it violates any other duties of cooperation, we shall be entitled to request indemnification of the damage incurred to us to that extent including possible surplus expenditure. Further claims remain reserved.
- 4.4 If the prerequisites of Clause 4.3 exist, the risk of an accidental loss or an accidental deterioration of the object purchased passes onto the Purchaser at that point in time when the Purchaser is in default of acceptance or is in debtor's delay.
- 4.5 If non-observance of the delivery time is due to Force Majeure such as for example natural disaster, war, riot or similar incidents such as for example strike, lock-out, the time is extended by the duration of the incidents causing the delay insofar as these impediments can be proven to have a not only insignificant influence on completion or delivery. The same applies, if these circumstances occur at sub-suppliers.
- 4.6 Partial deliveries are admissible within a reasonable extent.
- 4.7 Otherwise, we shall be liable for delay in delivery only in accordance with statutory provisions.
- 4.8 Moreover we shall be liable in accordance with statutory provisions insofar as the delay in delivery is based upon an intentional or grossly negligent contract violation for which we are responsible; we shall also be responsible for a fault caused by our representatives or vicarious agents.
- 4.9 Insofar as the delay in delivery is merely based upon simple fault and no mandatory liability is applicable due to injury of life, body or health, our liability for default damages is limited in such a way that the Purchaser can request 0.5 % each for each completed week of delay but in total not more than 5 % of the price for that delivery portion which due to the delay could not be put into useful operation. This

is not connected with a modification of the burden of proof to the Purchaser's disadvantage. The Purchaser's legal right of withdrawal remains unaffected.

- 4.10 Goods which have been reported to be ready for shipment have to be called by the Purchaser immediately but not later than after expiration of a time period of 20 calendar days after having been informed of the readiness for shipment. If no call occurs, we shall be entitled to put the goods on stock and store them at our own discretion at Purchaser's risk and to treat them as delivered ex works.
- 4.11 If shipment or delivery of the goods is delayed on request or at the instigation of the Purchaser, storage charges may be invoiced starting from one month after notification of readiness for shipment in the amount of 1% of the invoice value for each month started. The storage charges shall be limited to 5 % of the invoice value unless higher storage charges can be proven by us.
- 4.12 Fulfilment of our obligation in accordance with the German Packaging Regulations has been transferred by us to an authorized body, which sets up appropriate collecting boxes for packing material which has to be taken back in places where large quantities and small quantities of packing material occurs. Overwraps and sales packages will be taken back by us only via this authorized company. Outside the scope of application of the Packaging Regulations no packing material will be taken back by us.

## **5. Duties of Co-operation by the Purchaser**

- 5.1 Co-operation by the Purchaser, which is explicitly or tacitly agreed upon within the scope of the contract, will be performed without special remuneration unless specified otherwise.
- 5.2 The Purchaser shall be obliged to inform us on all facts in time from which it results that stock and products in store with us, which have been placed at disposal in view of production capacities reported to us, cannot be used or cannot be fully used. If residual stock remains, the Purchaser will accept the stock and eventual charges for its destruction in case of premature modification of its disposition. The same applies also to products for which we had to order minimum quantities from our suppliers, insofar as we had pointed out this fact to our customer in advance.
- 5.3 The Purchaser guarantees that the products supplied by it for further processing are suitable for this purpose. We are not obliged to inspect the products supplied by the Purchaser for their condition and suitability in view of further processing. Within the scope of current business relations as well as when a processing item has primarily been inspected, tested and released, the Purchaser shall be obliged to inform us unsolicited about each product change in writing. In the cases of current processing of items, the Purchaser shall be further obliged - for each modification of the production conditions in its plant, especially when replacing tools, machines or when introducing new production procedures - to inspect the item to be processed by us for variations and modifications and to inform us in writing of such variations and modifications.
- 5.4 We shall not be obliged to check the correctness of instructions given by our Purchasers, material selection or other provisions made by our Purchaser.
- 5.5 Therefore the Purchaser must check all instructions given as well as the quality of the materials specified or made available to us for compliance with statutory and technical provisions.
- 5.6 If the Purchaser defaults regarding its duty of procurement or duty to co-operate after a written reminder, we shall be entitled to statutory rights.
- 5.7 Taking back of goods by us requires an explicit written agreement. Taking back of the goods moreover requires that a collection order for the goods is placed by us at the Purchaser's expense. We are entitled to arrange this for the customer's account. If cost are incurred by us due to the fact that goods for taking back have been tendered to us unjustified, we shall be entitled to invoice such cost to the Purchaser. All risks incurred are at the expense of the Purchaser. Clause 5.7 is applicable only insofar as we are not obliged in any case by law to take back the goods.

- 5.8 The Purchaser complies with the requirements of the data protection law. In particular the Purchaser will respect the rights of employees, if personal data of BKS employees become known to the Purchaser. The customer agrees to conclude upon request by BKS a commissioned processing contract with the contents required for legal reasons.

## **6. Passing of Risk**

- 6.1 Unless otherwise specified in the order confirmation, delivery shall be deemed to be agreed upon "ex works".
- 6.2 The risk for delivery passes onto the Purchaser when leaving our works, at the latest with shipment of the consignment and/or delivery to the carrier or forwarding agent, even if partial deliveries are made or if exceptionally we carry out transport at our own expenses or with our transportation means, unless otherwise specified.
- 6.3 If shipment is delayed due to circumstances for which the Purchaser is responsible, the risk passes onto the Purchaser with receipt of the notification of readiness for shipment.
- 6.4 In case of return shipment (Clause 5.7), the risk of loss remains with the Purchaser until the products have been accepted at our works. Other provisions within the scope of a statutory obligation to take back remain unaffected.
- 6.5 If the Purchaser so requests, we will effect a transport insurance for the shipment; the charges associated with it will be borne by the Purchaser.

## **7. Redhibitory Defects**

We shall be liable for redhibitory defects as follows:

- 7.1 All such parts or services have to be reworked, newly delivered or rendered again free of charge at our option which within the statutory limitation - irrespective of the operating period - show a redhibitory defect insofar as its cause already existed at the time of passing of risk.
- 7.2 Claims due to redhibitory defects become barred by the statute of limitation in 12 months, unless a longer time period exists mandatorily by law. The time period starts with the passing of risk (Clause 6). If the goods are a building or an object, which according to its normal use has been used for a building, and has caused its defectiveness (building materials), the statutory provision shall apply (§ 438 subsection 1 no. 2 BGB [German Civil Code]). Further special statutory provisions on the statute of limitation and on consumer recourse also remain unaffected.
- 7.3 The Purchaser must notify obvious redhibitory defect to us promptly and within 7 days as from delivery in writing at the latest. The provision of § 377 HGB [German Commercial Code] remains unaffected.
- 7.4 First of all, we shall always be granted the possibility of subsequent performance within an adequate delay.
- 7.5 If subsequent performance fails, the Purchaser may withdraw from contract - without prejudice to eventual damage claims - or reduce payment. Replacement for fruitless expenditure can only be requested by the Purchaser, if we are responsible for the defect due to intent or gross negligence.
- 7.6 Claims as a result of defects do not exist in case of only minor variation from the agreed upon quality, in case of only minor impairment of usability, in case of natural wear and tear or damages occurring after passing of risk due to wrong or negligent treatment, excessive load, inappropriate consumables or due to special external influences which are not assumed according to contract as well as in case of non-reproducible software errors. If the Purchaser or third parties carry out modifications or repair work in an inappropriate manner, no claims for defects exist for it nor the resulting consequences. The same applies insofar as our specifications for handling and other instructions are not observed.

- 7.7 Claims by the Purchaser for expenditure necessary for the purpose of subsequent performance including but not limited to transport, road, work and material charges are excluded to the extent that the expenditure increases because the object of delivery has subsequently been taken to another place than the establishment of the Purchaser, unless this change of location corresponds to its use according to purpose.
- 7.8 Legal recourse claims by the Purchaser towards us exist only insofar as the Purchaser has not made any agreements with its customer beyond statutory claims due to defects.
- 7.9 To damage claims, Clause 9 applies. Further or other claims than those stipulated in this Clause or in Clause 9 for redhibitory defects are excluded.
- 7.10 If a notice of defects has been wrongly made, we are entitled to demand damages from the Purchaser for the expenses incurred by us in this connection.

## **8. Industrial Property Rights and Copyrights, Defective Titles**

Unless otherwise agreed upon, we shall be obliged to render delivery only in the country of the place of delivery free from industrial property rights and copyrights by third parties (hereinafter called property rights). Insofar as a third party due to violation of property rights by deliveries rendered by us and used according to contract, puts forward justified claims against the Purchaser, we shall be liable to the Purchaser within the delay determined in Clause 7.2 as follows:

- 8.1 At our option and at our own expenses we will either obtain a right of use for the deliveries concerned, modify them in such a way that the property right will not be violated, or replace them. If this is not possible for us under adequate terms and conditions, the Purchaser shall be entitled to statutory rights of withdrawal or reduction. The Purchaser shall only be allowed to request indemnification for fruitless expenditure, if we are liable for intent or gross negligence. Our obligation to pay damages is governed by Clause 9.
- 8.2 The above mentioned obligations exist only insofar as the Purchaser informs us immediately in writing about the claims put forward by the third party, does not recognise a violation and all defences and composition negotiations are reserved to us. If the Purchaser ceases to use the delivery for reasons of damage reduction or for other important reasons, it shall be obliged to inform the third party that no acknowledgement of a violation of a property right is connected with the cessation of use.
- 8.3 Claims of the Purchaser are excluded insofar as it is responsible for the violation of property rights.
- 8.4 Claims of the Purchaser are also excluded insofar as the violation of property rights is caused by particular specifications of the Purchaser, by an application unforeseeable by us or by the fact that the delivery is modified by the Purchaser or used together with products not delivered by us.
- 8.5 In case of violations of property rights, to the claims of the Purchaser stipulated in Clause 8.1, the provisions of Clauses 7.4, 7.5 and 7.9 apply accordingly.
- 8.6 Further claims of the Purchaser or other claims of the Purchaser than those stipulated in the present Clause 8 against us or our vicarious agents for defective title are excluded.

## **9. Total Liability**

- 9.1 Unless otherwise specified in the present terms and conditions including the provisions below, we shall be liable in the case of infringement of contractual and non-contractual obligations according to statutory provisions.
- 9.2 We shall be liable for damages - irrespective of the legal reason - within the scope of liability based on fault in the case of intent or gross negligence. In the case of

simple negligence, we shall be liable according to statutory provisions subject to a more lenient standard of liability (e.g. for diligence in own affairs) only

- a) for damages due to injury of life, body or health,
- b) for damages due to the not insignificant violation of a substantial contractual obligation (obligation, the fulfillment of which enables proper implementation of the contract in the first place and on the fulfillment of which the contractual partner regularly relies and may rely). But in that case, our liability for indemnification shall be limited to the foreseeable damage typically occurring.

9.3 The limitations of liability resulting from paragraph 2 shall also apply in the case of breaches of duty by and/or in favour of individuals for whose fault we shall be responsible according to statutory provisions. They do not apply, insofar as we have fraudulently concealed a defect or have assumed a quality guarantee for the goods, and for claims by the Purchaser according to the liability for products' law.

9.4 Due to a breach of duty, which is not a defect, the Purchaser can only withdraw from or terminate the contract, if we are responsible for the breach of duty. A free right of cancellation of the Purchaser (in particular according to §§ 650, 648 BGB) is excluded. Otherwise, the statutory prerequisites and legal consequences apply.

## **10. Retention of Title**

10.1 The objects of the deliveries (goods under retention of title) remain our property until payment of all claims against the Purchaser to which we are entitled from the business relationship. Insofar as the value of all security interests of which we are entitled against the Purchaser, exceeds the amount of all claims secured by more than 10 %, we will release a corresponding share of the security interest on request by the Purchaser.

10.2 During existence of the retention of title, the Purchaser shall not be permitted to pledge the goods or transfer them by way of security and resale is only permitted to resellers in normal dealings and only with the proviso that the reseller receives payment from its customer or makes the reservation that transfer of title to the customer will only occur, if the customer has met its payment obligations.

10.3 In case of attachments, seizures or other orders or interference by third parties, the Purchaser must inform us immediately so that we can institute a claim according to § 771 ZPO [German Civil Practice Act]. Insofar as the third party is not able to reimburse the court costs and extrajudicial costs of a claim according to § 771 ZPO to us, the Purchaser shall be liable for the loss incurred by us.

10.4 The Purchaser is obliged to take good care of the item purchased; especially it is obliged to insure the item purchased at its own expenses sufficiently at original value against fire, water damage and theft. Insofar as maintenance and inspection work is required, the Purchaser must carry out such work in time at its own expense.

10.5 In case of breaches of duty by the Purchaser including but not limited to delay of payment, we shall be entitled to withdrawal and taking back; the Purchaser is obliged to restitution. Taking back and/or exercise of the retention of title does not require rescission by the Supplier; these actions or an attachment of the goods under retention of title by us do not constitute a withdrawal from contract, unless this has explicitly been declared by us.

10.6 If the Purchaser has resold the purchased item in the ordinary course of business, it assigns, however, to us already now all debts in the amount of the final invoice value (including value-added tax) of our claim accruing for it from resale against its customers or third parties, regardless of whether the purchased item has been resold without or after further processing. The Purchaser remains authorised to collect this debt also after assignment. Our authority to collect the debt ourselves remains unaffected. But we undertake not to collect the debt as long as the Purchaser meets its payment obligations from the proceeds received and no lack of its financial capacity exists. But if this is the case, we can request that the Purchaser informs us about the debts assigned and their debtors, gives all information neces-

- sary for collection, delivers the respective documents, and informs the debtors (third parties) of the assignment.
- 10.7 Processing or reshaping of the purchased item by the Purchaser will always be made on behalf of us. If the purchased matter is processed with other objects not belonging to us, we acquire joint ownership in the new object in the ratio of the value of the purchased item (final invoice value including value-added tax) to the other processed objects at the time of processing. To the object created by processing moreover the same applies as to the purchased item delivered under retention of title.
- 10.8 If the purchased item is mixed inseparably with other objects not belonging to us, we acquire joint ownership in the new item in the ratio of the value of the purchased item (final invoice value including value-added tax) to the other mixed objects at the time of mixing. If the mixing occurs in such a way that the item of the Purchaser has to be considered the main item, it is deemed to have been agreed upon that the Purchaser transfers pro rata joint ownership to us. The Purchaser holds in custody for us the exclusive ownership or joint ownership thus created.

## **11. Place of Performance, Venue, Governing Law**

- 11.1 For all rights and duties resulting from our deliveries and services, for both parties the registered office of our company shall be considered to be the place of performance.
- 11.2 In dealings with fully qualified merchants within the meaning of the German HGB [Commercial Code] and legal persons under public law, for lawsuits for which district courts have jurisdiction in rem, the Velbert District Court, and for lawsuits for which county courts have jurisdiction in rem, the Wuppertal County Court shall have general jurisdiction.
- 11.3 The contractual relationship shall be governed by the law of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 11.4 The data specified by the Purchaser will be stored and processed by electronic data processing to the extent that this is admissible in accordance with the applicable data protection law.

## **12. According to Art. 13 of the German DSGVO (Datenschutzgrundverordnung) VO 679/2016 EU [ Data Protection Basic Regulation], we inform as follows:**

- **Responsible:**  
BKS GmbH  
Heidestraße 71  
42549 Velbert/Germany  
Phone: +49 2051 201-0  
Fax: +49 2051 201-9733  
E-Mail: info@bks.de
  
- **Contact Information of the Data Protection Officer:**  
BKS GmbH  
Data Protection Officer  
c/o Gretsche-Unitas GmbH  
Baubeschläge  
Johann-Maus-Straße 3  
71254 Ditzingen/Germany  
Phone: +49 7156 301-660  
Fax: +49 7156 301-77660  
E-Mail: datenschutz@g-u.de

- **Purposes** for which the personal data shall be processed:  
Constitution and execution as well as performance and termination of the contractual relationship (sale of goods and rendering of services by BKS). We will use the information of direct contact persons only for contacting with respect to the contractual relationship or the purchase order.
- **Legal Basis** for the processing: Art. 6 subsection 1 (b) DSGVO (Datenschutzgrundverordnung [Data Protection Basic Regulation]) insofar as the data subject is a contact persons of legal entities. Art. 6 subsection 1(f) DSGVO (Datenschutzgrundverordnung) [Data Protection Basic Regulation].
- **Recipients** or categories of recipients of the personal data: the data will only be processed by the employees of BKS of the relevant departments and will not be forwarded to external third parties.
- **Duration** for which the personal data will be stored or, if this is not possible, the criteria for the determination of such duration: we will store the data for the duration of the retention obligation under commercial and tax law.
- Insofar as the data subject is are the contact person of legal entities: the legitimate interests of the person in charge and the employer are the performance of the contractual relationship and direct communication with the person in charge internally.
- The provision of the personal data is not prescribed by law or contract or required for contract conclusion. The data subject is not obliged to provide the personal data and the lack of provision would have no consequences. Under contractual law, only conclusion of the contract by a (verifiably) authorised person on the part of the customer is required.
- An automated decision-making does not occur.

The data subject is entitled to obtain **information** by the person in charge on the personal relating to him/her as well as to **correction or cancellation or restriction of processing**. We also inform the data subject on his/her right of **data portability** which means that the data subject is entitled to receive the personal data relating to the data subject, which he/she has provided to us, in a structured, common and machine-readable format, and the data subject is entitled to forward these data to another person in charge without being impeded by us.

Insofar as the data subject is contact persons of legal entities: The data subject is entitled to **object** against processing of the personal data relating to him/her, which occurs on the basis of Art. 6, subsection 1 (f), at any time for reasons resulting from his/her particular situation. The person in charge does not process the personal data any longer unless he or she can provide mandatory reasons worthy of protection for the processing which outweigh the interests, rights and liberties of the person concerned or processing serves for asserting, exercising or defending legal claims.

The data subject is entitled to **complain at the Data Protection Authority**. The competent Supervisory Authority for Data Protection is:

**Der Landesbeauftragte für Datenschutz und  
Informationsfreiheit Nordrhein-Westfalen  
Postfach 20 04 44, 40102 Düsseldorf/Germany  
Kavalleriestraße 2-4, 40213 Düsseldorf/Germany  
Phone: 0211/384 24-0  
Fax: 0211/384 24-10  
E-Mail: [poststelle@ldi.nrw.de](mailto:poststelle@ldi.nrw.de)  
Internet: [www.ldi.nrw.de](http://www.ldi.nrw.de)**