

General Sales and Delivery Terms of BORSI GmbH & Co. KG (as of August 2008)

1. Area of Application, General Information, Definition of Terms

- a) The following General Sales and Delivery Terms shall solely apply; we do not recognize any contradictory terms of the customer or those differing from our Sales and Delivery Terms unless we agreed to their validity in writing. Our Sales and Delivery Terms shall also apply if we carry out the delivery/service without any reservation, in knowledge of terms of the customer that are in conflict with or differ from our Sales and Delivery Terms.
- b) The purchase object according to these General Sales and Delivery Terms are the objects we must deliver or have delivered irrespective of whether based on a purchase agreement or contract for work or services.

2. Offer, Conclusion of the Contract

- a) Our offer is without engagement unless otherwise specified in the offer.
- b) Our written order confirmation is authoritative for the materialization of a sales agreement and for the scope of the delivery. Any additional agreements and modifications shall require our written confirmation in order to be valid.
- c) We reserve ownership and copyrights to illustrations, drawings, calculation principles and other documents issued by BORSI GmbH & Co. KG. This shall also apply to written documents labelled "confidential". The customer shall require our express written agreement before the documents are forwarded to third parties.

3. Excess and Lower Delivery Quantities

- a) Due to technical reasons during production (customized production) it is unavoidable that the quantities ordered may be slightly exceeded or not met. Surplus quantities up to 5 % of the order volume can always be charged separately; exceeding surplus quantities can only be charged, if customer

had not informed us within 10 working days after receipt of delivery that he refuses the acceptance of the surplus quantity.

- b) Incorrect quantities up to 5% of the order scope shall not constitute a fault and there shall be no claim for subsequent fulfilment; in this case we shall issue the customer with a credit to the amount of the quantity missing from the delivery.

4. Delivery Time, Delivery Deadline, Reservation of Self-Delivery, Default, Part Delivery

- a) Delivery times are only binding when expressly specified by us as binding in writing. Commencement of the delivery time indicated by us shall presuppose the clarification of all technical questions.
- b) Further, adherence to our delivery obligations shall presuppose the timely and correct fulfilment of the customer's obligations. The plea of unfulfilled contract shall remain reserved.
- c) Delivery by us is under the reservation of self-delivery. We shall inform the customer immediately if self-delivery does not take place. If there is no self-delivery the purchase agreement or contract for work or services is deemed as not concluded; we shall then immediately reimburse any counter consideration paid to the customer. We shall not undertake a procurement risk.
- d) If the customer comes into default of acceptance or culpably breaches other obligations to cooperate, then we are entitled to demand compensation for the damage thus arising to us, including for any additional expenditure. Further-reaching claims are reserved.
- e) If the pre-conditions of item 4d) are present, the risk of incidental destruction or incidental deterioration of the purchased object shall be passed on to the customer at the moment it came into default of acceptance or debtor default.
- f) We shall be liable according to statutory requirements so long as the underlying agreement is a fixed transaction according to article 286 para. 2 no. 4 German Civil Code or of article 376 German Commercial Code. We shall also be liable according to statutory provisions if as the result of a default in delivery attributable to us the customer is entitled to assert that it is no longer interested in a further performance of contract.

- g) Furthermore, we shall be liable according to statutory provisions as long as the default in delivery is founded on a wilful or grossly negligent breach of contract attributable to us; culpability of our representatives or auxiliary persons is to be ascribed to us. To the extent that the default in delivery is due to grossly negligent breach of contract attributable to us, our liability for damages shall be limited to the foreseeable, typically occurring damage.
- h) We shall also be liable according to statutory provisions as long as the default in delivery attributable to us is founded on culpable breach of an essential contractual obligation; in this case, however, compensation for damage liability is limited to the foreseeable, typically occurring damage.
- i) Additional statutory claims and rights of the customer remain unaffected.
- j) We are entitled to make part deliveries in a quantity acceptable for the customer.

5. Passage of Risk and Acceptance

- a) Unless otherwise stipulated in the order confirmation, delivery is agreed "ex works".
- b) If shipping is agreed this shall take place at the cost and risk of the customer. In the event of shipment, we shall be responsible for choosing the shipping route, the type of shipment and the forwarding agent or carrier if no other written agreement has been made.
- c) In the case of shipping, assumption of risk shall occur when the goods have been transferred to the transport company or have left the manufacturer's plant, also if partial deliveries take place or if have taken over other services, for example shipping, costs of transportation and installation. If shipping is delayed as a result of circumstances that can be attributed to the customer, then risk shall be transferred to the customer from the day of shipping readiness; however, we are obliged to effectuate the insurance demanded by the customer at the request and the expense of the customer.

6. Prices, Terms of Payment

- a) Unless stipulated otherwise in the order confirmation, our prices shall apply "ex-works", excluding packaging; packaging shall be invoiced separately.

- b) Our prices are plus statutory VAT if this is imposed and plus any taxes, duties and other public fees in the customer's country. The statutory VAT is incurred at the statutory rate on the day the invoice is issued and is listed separately in the invoice.
- c) The deduction of discounts shall require special written agreement.
- d) Unless stipulated otherwise in the order confirmation, the purchase price shall be due for payment without deduction within 30 days of the invoice date. The statutory provisions shall apply as regards the consequences of default.
- e) Set-off rights shall only be due to the customer if its counter-claims are established to be *res judicata*, are undisputed, or recognized by us. Moreover, the customer shall be authorized to exercise a right of retention to the extent that its counter-claim concerns the same contractual relationship.
- f) For contracts with an agreed delivery time of more than 2 months we reserve our right to increase and decrease the prices according to occurred cost modifications, particularly due to collective agreements and material price modifications. When required by the customer we will provide evidence.

7. Liability for Defects

- a) Customer claims for defects in the context of a purchase contract or of a contract for work or services presuppose that the customer has properly satisfied its duty to inspect and complain according to article 377 German Commercial Code.
- b) Where there is a defect in the purchase object, we are entitled according to our choice to subsequent fulfilment in the form of defect removal or to the delivery of a new defect-free purchase object. In the event of rectifying the defect or replacement we are obliged to bear all expenses required for the purpose of subsequent fulfilment, in particular transport, road, labour and materials costs, as long as the costs are not increased by the fact that the purchased item was brought to a place other than the place of execution.
- c) If subsequent fulfilment fails, the customer is entitled to demand cancellation or reduction, according to its choice.

- d) We shall be liable according to statutory provisions to the extent that the customer asserts damages founded on intent or gross negligence, including the intent and gross negligence of our representatives or auxiliary persons. Unless we are charged with wilful breach of contract, liability for damages shall be limited to the foreseeable, typically occurring damage
- e) We shall be liable according to statutory provisions to the extent that we culpably breach an important contractual obligation; in this event too, however, liability for damages shall be limited to the foreseeable, typically occurring damage.
- f) If the customer is entitled to damage compensation in lieu of service, our liability shall be limited to damages for the foreseeable, typically occurring damage, also in the context of letter c).
- g) Liability due to culpable injury to life, person or health shall remain unaffected; this also applies to mandatory liability in accordance with the product liability act.
- h) Unless otherwise stipulated above, liability is excluded.
- i) The term of limitation for claims for defects is 12 months, calculated from transfer of risk.

8. Overall Liability

- a) Further-reaching liability for damages than that provided for in article 4 and 7 is - regardless of the statutory form of the asserted claim - excluded. This applies in particular to damage compensation claims arising from default at close of contract, due to other breaches of obligations or due to claims to material damage compensation arising from tort in accordance with article 823 German Civil Code.
- b) The restriction according to item 8 a) shall also apply if the customer demands compensation of useless expenditure in lieu of service instead of a claim for damage compensation.
- c) To the extent that liability for damages against us is excluded or limited, this shall also apply in respect of personal liability for damages of our salaried employees, staff members, representatives and auxiliary persons.

9. Reservation of Ownership

- a) We shall reserve ownership of the purchase object until all payments arising from the business relationship have been received, including all claims arising from follow-up orders, repeat orders, replacement orders.
- b) The customer undertakes to handle the purchase object with care; in particular the customer undertakes to insure it sufficiently at cost when new, at its own expense, against damage through fire, water and theft. If maintenance and inspection tasks are required, the customer must carry these out at its own expense in good time.
- c) The customer must inform us in writing immediately in the event of attachment or other third-party interventions, so that we can take legal action in accordance with article 771 German Code of Civil Procedure. Unless the third party is able to refund to us the legal and out-of-court costs of legal action in accordance with article 771 German Code of Civil Procedure, the customer shall be liable for the financial loss accruing to us..
- d) The customer is entitled to re-sell the purchase object in the normal course of business; however, it shall transfer to us, with effect of today, all accounts receivable accruing to it from the re-sale against its buyers or third parties, to the sum of the final invoiced amount of our accounts receivable (including VAT), and this irrespective of whether the purchase object has been sold without or after processing. The customer shall remain authorized to call in this debt even after assignment. Our authorization to call in the debt ourselves shall hereby remain unaffected. However, we undertake not to call in the debt as long as the customer meets its payment obligations arising from the collected revenue, does not come into default of payment and in particular as long as no request for instigating bankruptcy proceedings has been submitted or there is no cessation of payment. However if this is the case, we shall be able to request that the customer make the transferred accounts receivable and their debtors known to us, make all required statements concerning the collection, hand over all corresponding documentation and inform the debtors (third parties) of the assignment.
- e) Processing or reconstruction of the purchase object by the customer shall always be undertaken for us. If the purchase object is processed using other objects not belonging to us, we shall acquire co-ownership of the new object in proportion to the value of the purchase object (final invoiced amount, in-

cluding VAT) compared with the other processed objects at the time of processing. The same shall furthermore apply to the object arising from processing as for the purchase object delivered under reserve.

- f) If the purchase object is inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new object in proportion with the value of the purchase object (final invoiced amount, including VAT) compared with the other mixed objects at the time of mixing. If mixing occurs in such a manner that the customer's item is to be regarded as the main item, it shall be deemed as agreed that the customer transfers proportionate co-ownership to us. The customer shall hold for us the sole ownership or co-ownership thus arising.
- g) In order to secure our accounts receivable against the customer, the customer shall also assign to us all accounts receivable against it accruing against a third party as a result of the connection of the purchase object with a property.
- h) We undertake to release the securities to which we are entitled to at the request of the customer as long as the realizable value of our securities exceed the accounts receivable to be secured by more than 10 %; selection of securities to be released shall fall to us.

10. Place of Execution, Place of Jurisdiction, Applicable Law, Miscellaneous

- a) Our seat of business shall be the place of jurisdiction; however, we are entitled to bring the customer before its local court.
- b) Unless otherwise stipulated in the order confirmation, our seat of business shall be the place of execution.
- c) German law shall apply to the entire contractual relationship; validity of the United Nations Convention on Contracts is excluded.