

General Terms of Sale of Becker Plastics GmbH

Section 1 General – Area of Validity

1. Our terms of sale shall apply exclusively; we shall not accept contradictory terms of sale or terms deviating from our terms of sale of the customer unless we have explicitly agreed to their validity in writing. Our terms of sale shall apply even in the event that we unreservedly carry out the delivery to our customer in the knowledge of contradictory terms or terms deviating from our terms of sale.
2. Our terms of sale shall apply only versus businessmen according to Section 310 Paragraph 1 BGB (German Civil Code).

Section 2 Offer – Offer Documents

1. If the order can be qualified as offer according to Section 145 BGB we shall accept said offer within 2 weeks. The order is accepted by an order confirmation to the customer and is also valid without signature.
2. We shall reserve the right of property and copyright to illustrations, drawings, calculations and other documents. This shall also apply to such written documents that are marked as "confidential". Before transferring them to third parties, the customer shall require our explicit written consent.

Section 3 Prices – Terms of Payment

1. Unless the order confirmation states otherwise, our prices shall be valid "ex works", excluding packaging; the latter shall be invoiced separately. We shall reserve the right to change our prices accordingly if upon conclusion of the contract cost reductions or cost increases occur, especially due to personnel costs or changes of the material price. These shall be proven to the customer upon request.
2. The legal VAT shall not be included in our prices; it shall be itemized in the invoice on the invoicing day and at the legally valid rate.
3. Deduction of discounts shall require special agreement.
4. Unless otherwise stated in the order confirmation, the purchase price shall be due for payment net (without discount) within 30 days as of invoicing date. The legal regulation as regards to delayed payment shall apply.
5. The customer shall be entitled to the right to balance only of his counter claims have been legally established or have been recognized by us. Further, he shall be entitled to execute his right of retention insofar as his counter claim arises from the same contractual relationship.

Section 4 Delivery Time

1. The beginning of our stated delivery time is based on the assumption that all technical questions have been clarified.
2. Observation of our obligation to supply requires proper fulfilment of the obligation on the part of the customer. Defence of non-fulfilment of the contract shall remain reserved.
3. If the customer is in delay of acceptance or if he culpably breaches other obligations to cooperate we shall be entitled to claim compensation for the damage incurred to us insofar, including possible additional expenses. Further claims or rights shall remain unaffected.
4. If the conditions of Paragraph (3) apply the risk of accidental destruction or accidental deterioration of the sold object shall be transferred to the customer at the time that he entered into delay of acceptance or payment.
5. We shall be liable according to the legal regulations, insofar as the underlying purchase contract is a forward deal in the sense of Section 286 Paragraph 2 No. 4 BGB or of Section 376 HGB (German Commercial Code). Further, we shall be liable according to the legal regulations insofar as resulting from a delivery delay that we are responsible for the customer is entitled to ascertain that his interest in further fulfilment has become void.
6. Further, we shall be liable according to the legal regulations insofar as the delivery delay was caused by an intentional or culpably negligent breach of contract that we are responsible for; breach of our representatives or vicarious agents shall be our responsibility. Insofar as the delivery delay was caused by a culpably negligent breach of contract that we are responsible for our liability for the damage shall be limited to the foreseeable, typically occurring damage.

7. Further, we shall be liable according to the legal regulations insofar

as the delivery delay that we are responsible for was caused by a culpable breach of an essential contractual obligation; in this case however, our liability for the damage shall be limited to the foreseeable, typically occurring damage.

8. Further, we shall be liable in the event of delivery delay for each completed week of delay in the scope of a flat rate delay compensation over 0.5% of the value of the goods delivered, however maximally not more than 5% of the goods delivered.
9. We are entitled to effect part deliveries, part services and deliveries in advance. Additional deliveries or short supplies due to production up to 10 % of the quantity ordered are permissible.
10. Further legal claims and rights of the customer shall remain reserved.

Section 5 Transfer of the Risk – Packaging Costs

1. Unless stated otherwise in the order confirmation, delivery "ex works" shall be deemed agreed.
2. For return of packaging material special agreements shall apply.
3. Insofar as the customer desires this, the delivery shall be covered by transport insurance; the incurred costs shall be borne by the customer.

Section 6 Liability for Defects

1. Warranty claims on the part of the customer shall be subject to proper execution of his owed obligation to examine and complain according to Section 377 HGB.
2. Insofar as there is a defect of the sold object we shall be entitled at our choice to re-fulfilment in the form of repair of the defect of delivery of a new object without defects. In the event of repair of the sold object or replacement delivery we shall be obliged to bear all the expenses necessary for the purpose of re-fulfilment, especially transport, road, work and material costs, insofar as they are not increased that the sold object was transported to a place different than the place of fulfilment.
3. If re-fulfilment fails the customer shall be entitled at his choice to withdraw or claim reduction.
4. We shall be liable according to the legal regulations insofar as the customer makes claims for damage based on intent or culpable negligence including intent or culpable negligence of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract the liability for damage shall be limited to the foreseeable, typically occurring damage.
5. We shall be liable according to the legal regulations insofar as we are culpably breaching an essential contractual obligation; however, even in this case, our liability for the damage shall be limited to the foreseeable, typically occurring damage.
6. Insofar as the customer is entitled to compensation of the damage instead of the service our liability shall also in the scope of Paragraph (3) be limited to the replacement of the foreseeable, typically occurring damage.
7. Liability due to culpable injury of life, body or health shall be unaffected; this shall also apply to obligatory liability according to the product liability law.
8. Unless different provisions were made above liability shall be excluded.
9. The period of limitation for warranty claims shall be 12 months, as of transfer of the risk.
10. The period of limitation in the event of recourse according to Sections 478, 479 BGB shall remain unaffected; it is five years, as of the delivery of the defective object.

Section 7 Overall Liability

1. Further liability for damage claims than stipulated in Section 6 shall be excluded irrespective of legal nature of the claim made. This shall especially apply to warranty claims resulting from default at the time of the conclusion of the contract, due to other breaches of obligations or due to tortious warranty claims according to Section 823 BGB.

2. Limitation according to Paragraph (1) shall also apply insofar as the customer requires, instead of the claim to compensate for the damage, replacement of futile expenses.

3. The applicable law shall be the national law of the Federal Republic of Germany (BGB, HGB – German Commercial Code – etc); application of the UN purchasing law shall be excluded.

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3. Insofar as warranty claims against us are excluded or limited this shall also apply with regard to the personal liability of our employees, staff, personnel, representatives and vicarious agents.

Section 8 Securing of Reservation of Title

1. We shall reserve the title to the sold object until all payments from the delivery contract have been received. In the event of the customer's conduct contrary to the contract, especially delay of payment, we shall be entitled to retract the sold object. Retraction of the sold object by us shall imply withdrawal from the contract. Upon retraction the sold object we shall be entitled to the use thereof; the proceeds of said use shall be balanced against the liabilities of the customer – discounting adequate use costs.
2. The customer shall be obliged to treat the sold object carefully; he shall especially be obliged to sufficiently insure it at new price value against damage by fire, water and theft at his cost. Insofar as maintenance and inspection works are necessary, the customer shall carry out said works timely at his own cost.
3. In case of attachment or other involvement of third parties, the buyer shall immediately inform us in writing, so that we may file suit according to Section 771 ZPO (German Code of Civil Procedure). Insofar as the third party is unable to compensate us for the legal and extra-legal costs of a suit according to Section 771 ZPO, the buyer shall be liable against us for the incurred loss.
4. The customer shall be entitled to resell the sold object in proper course of business; however, he shall now cede to us all claims over the final invoice amount (including VAT) of our claim that he will accrue from the resale against his customers or third parties, irrespective of the fact whether the sold object was resold without or upon processing. The customer shall be authorized to collect said claim even upon cession. Our authorization to collect the claim ourselves shall not be affected hereby. However, we shall be obliged not to collect the claim as long as the customer complies with his obligation to pay from the received proceeds, is not in delay with his payment and, especially, no application for composition or insolvency proceedings have been filed or cession of payment exists. In the event, however, that this is the case we may request that the customer discloses the claims ceded to us and their creditors, that he provides all information for collection, submits the pertaining documents and informs the creditors (third parties) about the cession.
5. Processing or re-shaping shall be carried out for us by the customer. If the sold goods are mixed with other objects that are not our property we shall acquire shared ownership of the new object at the proportion of the value of the sold object (final invoice amount including VAT) in relation to the other processed objects at the time of processing. Further, for the object created by means of processing the same applies as for the conditionally supplied sold object.
6. If the sold goods are mixed inseparably with other objects that are not our property we shall acquire shared ownership of the new object at the proportion of the value of the sold object (final invoice amount including VAT) in relation to the other mixed objects at the time of mixing. If the mixing is carried out in a way that the customer's object is considered the main object it shall be deemed agreed that the customer shall transfer shared ownership to us proportionately. The customer shall keep the thus created sole ownership or shared ownership for us.
7. Further, the customer shall cede to us the claims to secure our claims against him which are accrued to him by combining the sold object with a parcel of land vis-à-vis a third party.
8. We shall be obliged to release the securities accrued to us at the customer's request insofar as the realizable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities shall be at our choice.

Section 9 Court of Jurisdiction – Place of Fulfilment – Applicable Law

1. Insofar as the customer is a businessman, our domicile shall be the court of jurisdiction; however, we shall be entitled to bring action against the customer at his domicile.
2. Unless stated otherwise in the order confirmation, our domicile shall be place of fulfilment.