

# CONDITIONS OF SALE AND DELIVERY

Any and all offers, sales and deliveries by Baustoff + Metall Gesellschaft m.b.H. (hereafter "B+M") to entrepreneurs (hereafter "customer") shall be performed subject to the conditions below even if not explicitly stated. Any changes or deviations shall only become binding upon express written agreement with B+M. Acceptance of orders and confirmation of orders shall be made based on these Conditions of Sale and Delivery.

## 1. Offers/prices:

Unless otherwise expressly noted, offers by B+M are ex B+M warehouse and subject to change without notice, as well as without obligation. Prices given are net prices exclusive of value-added tax. Costs for packing beyond original packaging, transport, loading, freight, customs duty, public charges, taxes and for any (desired) insurance are also charged to the customer. Packing material shall be disposed of by the customer at his expense.

In addition, binding offers/prices quoted in a binding manner by B+M shall be valid for the duration of one month, unless otherwise expressly stated.

If B+M commits itself to certain prices and/or terms within a framework agreement, then such prices and/or terms are under the express condition that price-setting factors beyond the disposal of B+M (such as producer's/supplier's prices, collective agreement remuneration) will not subsequently change. Should a change occur, then B+M shall be entitled to make adequate adaptations upon immediate notification of the customer. If the customer disagrees, B+M may revoke the framework agreement, effective immediately.

## 2. Delivery:

Periods of delivery begin to run upon acceptance of an order (in the event of an order confirmation, then upon such confirmation), or in the event of agreed obligations for advance performance by the customer, then at the earliest upon completion of such advance performance.

Such advance performance obligations may include, for instance, further specification, furnishing bank guarantees and letters of credit, advance payments, etc. Any delivery periods and deadlines for B+M are considered to be approximate unless otherwise expressly stated. B+M will make every effort to comply with them as much as possible. If B+M substantially exceeds such periods or deadlines, the customer shall be entitled to grant a reasonable grace period and to cancel the contract after the expiry of such grace period or to demand performance.

Delivery periods and deadlines for B+M shall be reasonably extended in the event of labor dispute, especially strike and lock-out, stoppage of work, unforeseen difficulty in procuring raw and auxiliary material or in energy supply, in the event of nonconforming production or execution as well as unforeseen obstacles that lie beyond B+M's will and sphere of power, insofar as the activity or obstacles have a significant influence on completion and delivery of the goods.

This shall also hold true should such circumstances arise with manufacturers or subcontractors for the supply of goods. B+M shall notify the customer as soon as possible of the beginning and end of any such activity or obstacles.

Should subsequent changes or specifications be agreed, the period of delivery shall also be extended as appropriate. B+M shall in any event also be entitled to charge additional costs incurred as a result of any such change.

B+M shall in any event be entitled to charge the costs, deliveries and expenses caused by the delay, if performance is delayed by customer request or for any other reason which otherwise falls under the customer's purview.

If B+M has notified the customer that goods ordered are ready for shipment or pick-up, the customer, without prejudice to his payment obligation, shall be obliged to ensure acceptance of the goods within 14 days of notification. If the goods are not accepted within this period, B+M shall in any event also be entitled to store the goods at its discretion, at the expense and risk of the customer.

Packing material shall be charged and only taken back by B+M to the extent required by law. For goods delivered on pallets, B+M shall charge a pallet deposit. If the pallets are returned in good condition, the deposit shall be refunded. Pallet collection shall be charged extra.

## 3. Performance, transport and passage of risk:

The place of performance and delivery shall be the B+M warehouse or the manufacturer's plant at B+M's choice – unless otherwise agreed. Upon delivery (or upon default of acceptance) the danger and entire risk of accidental loss in particular shall pass to the customer.

Should delivery to a different place be agreed (section 429 ABGB, "Austrian Civil Code"), the risk passes upon delivery to the forwarding agent, carrier or otherwise authorized or designated shipping service, whereby B+M shall not be liable for choosing the shipping method or carrier should the customer fail to specify either. B+M itself shall in any event be considered an authorized sender, likewise shall the manufacturer or its agents. If delivery to a different place is performed by someone other than B+M itself or by/through the manufacturer, delivery shall be commissioned by B+M on account of the customer.

Should delivery to a different place be agreed, it shall be made without unloading. Unloading is the customer's responsibility. The customer shall provide suitable storage area directly next to the delivery vehicle; failure to meet this obligation shall be at the expense of the customer. The customer shall provide for immediate vehicle unloading. Delays in unloading shall be at the expense of the customer and any cost will be charged to him.

Should unloading by the delivery carrier be expressly agreed, unloading will be charged separately. Unloading means placing the goods in a suitable storage area to be provided by the customer directly next to the delivery vehicle.

Any performance beyond that shall be subject to a separate agreement in individual cases and will be charged separately. Delivery to a separate place shall be performed on the condition of a possible and authorized entry of the delivery vehicle (typically a heavy goods vehicle). Failure to deliver due to lack of possible and authorized entry or lack of a suitable storage area is also deemed a default in acceptance.

A separate agreement shall in any event be made for rail shipments.

## 4. Warranty:

B+M offers a six (6) month warranty according to the following conditions that the goods be free of defect during passage of risk and that they comply with the agreement in terms of type and quantity.

B+M shall act as distributor. The characteristics specified and warranted by the manufacturer or importer of the goods have

not been verified by B+M through its own tests. Any specifications and warranties made by the manufacturers or importers contained in publications, such as catalogues, folders, circulars, advertisements, illustrations, price lists, etc. as to the characteristics of the goods, such as calculations, dimension and material data, average consumption values, test results and certificates, do not create a warranty obligation of B+M.

Any qualified inspection, in particular with respect to the specifically relevant project is within the customer's own responsibility, inasmuch as the customer is responsible for assessing any necessity for change resulting from it. The customer shall be responsible for inspecting the goods immediately and for immediate detailed notification of any defects and complaints in writing.

Complaints shall in any event be noted on the delivery slip, or on the consignment note, should delivery be made by a forwarding agent. No claim of defectiveness shall be possible if the customer fails to comply with the responsibility of immediate inspection of goods, or upon recognition of any hidden defects, and if the customer fails to provide immediate, detailed notice of defects in writing. The customer is also obliged to open the package units for the purpose of inspection.

In addition, no warranty is assumed in the following particular cases:

Inappropriate and improper storage, use, treatment, handling, processing or working, faulty assembly or putting into service by the customer or third parties, natural wear, use of inappropriate operating resources, noncompliance with instructions by the seller concerning the goods, change(s) made to the goods, exposure of the goods to inappropriate chemical, electrochemical, electric or other physical influences and/or improper repair.

If a warranty is to be covered by B+M, it may, by B+M's choice, consist of a free repair or new/substitute delivery. Replaced parts/goods become the property of B+M.

The customer shall grant B+M the required time and opportunity to make all repairs or substitute deliveries deemed necessary by B+M, or otherwise lose any claim of defectiveness. The customer has the right to remedy the defect alone or through a third party and to demand compensation by B+M for the necessary costs only in urgent cases where work safety is endangered and to ward off disproportionately large damage, of which B+M needs to be informed immediately.

To express the provision of the Austrian Civil Code in concrete terms, the following is agreed: Should repeated warranty action – at least twice – by B+M not lead to remedy of the defect and should further rectification of the defect be unacceptable, the customer shall be entitled – if possible with the consent of B+M – to demand rescission of sale or reduction of the purchase price.

Under those conditions, the customer shall also be entitled to remedy the defect alone or through a third party and to demand compensation by B+M of the necessary costs.

Claims by the customer beyond this shall not be accepted.

The warranty period for a replacement piece or a repair is three (3) months (warranty conditions are otherwise as stated above); but shall run at least until the expiry of the original warranty period for the delivery item.

Return shipment of replaced parts/goods shall be at the expense of the customer.

## 5. Exchange/returns:

Generally goods may not be exchanged or returned.

B+M will only deviate from this rule expressly by way of exception. In such an exceptional, only specially agreed upon case, the following terms shall apply:

It must be standard merchandise. The goods must be in the original packaging, completely undamaged and in a condition in which the goods are fully resalable, and not just resalable at a lower price. B+M will charge a handling fee of 20 percent of the net sales price. Under no circumstances will the return shipment be made at the expense of B+M.

## 6. Payment terms:

Payment and discount periods shall be valid from the date of invoice.

Unless otherwise stated, payment of the delivery is due immediately upon receipt of invoice.

B+M shall accept checks for payment, which are subject to be redeemed for cash. Incoming payments, without prejudice to the reason for payment stated, are primarily used to cover immediately payable incidental expenses (costs, interest, etc.). Remaining balances shall be offset against the oldest accounts receivable for deliveries and services. Deduction of a cash discount is only recognized if made in the agreed amount and within the agreed period and no other liabilities are due. In the event of default payment, default interest shall be charged at no more than 8 percentage points above the base interest rate of the Austrian Central Bank. If court proceedings are instituted for default payment, composition with creditors or bankruptcy, etc., all individual claims shall become payable immediately.

Furthermore, in the event of noncompliance with payment terms, and should all claims become immediately payable, B+M is released from all further obligation to perform and deliver and is entitled to retain deliveries and performance that remains outstanding, and to demand advance payments and/or security and to cancel the contract. Any withholding of payments or compensation by the customer based on counter-claims is unacceptable.

In the event of collection in court or without judicial process, the incoming payments will be offset against costs first, then interest and finally the principal due.

## 7. Retention of title:

The goods delivered remain the property of B+M until all claims from the delivery have been paid (invoice amount plus any interest and incidental expenses). Deliveries performed for a specific building project, even if ordered, delivered and invoiced by section, are deemed a single order. In such cases, retention of title for all goods shall only expire once all claims from this single order have been settled. In the event of a default in payment, B+M shall be entitled to collect the goods under retention of title without this constituting a withdrawal from the contract. B+M shall be entitled to charge reasonable transport and handling costs associated with any return of goods.

The customer shall assign his claims against any third party insofar as such claims arise from re-selling, processing, union or commingling of goods until all claims against the customer for payment to B+M have been fulfilled.

Until retention of title expires, creating a security or lien on the goods is prohibited.

B+M shall in any event be entitled to demand information about the claims assigned, to notify the third party of the assignment and to perform the collection itself.

## 8. Damages:

B+M shall act as distributor. The characteristics specified and warranted by the manufacturer or importer of the goods have not been verified by B+M through its own tests. The specifications and warranties of the manufacturers or importers contained in publications, such as catalogues, folders, circulars, advertisements, illustrations, price lists, etc. as to the characteristics of the goods, such as calculations, dimensions and material data, average consumption values, test results and certificates, have not been verified by B+M through its own tests.

Any qualified inspection, in particular with respect to the specifically relevant project, is within the customer's own responsibility, inasmuch as the customer is responsible for assessing any necessity for change resulting from it. Beyond the warranty (see above), B+M shall not assume any liability whatsoever for any particular characteristic, quality, nature or use of a product distributed by B+M. B+M shall not assume any liability whatsoever for calculations, dimension and material data, average consumption values, etc., and in particular no liability for the manufacturer's or importer's specifications in publications, such as catalogues, folders, circulars, advertisements, illustrations, price lists, etc. B+M is not aware of the end use and employment of the products.

Damages for violation of a pre-contractual duty to warn can at any rate only be paid if the customer has informed B+M about the intended use of the goods to be delivered before ordering in writing and in detail and B+M expressly warranted the suitability of the products for that use.

B+M shall otherwise be liable for any fault of B+M and its vicarious agents, should at least blatant, gross negligence be present. B+M shall not be liable for ordinary or plain gross negligence.

In the event of liability, B+M shall only be liable for reasonably foreseeable damage as per standard contract provisions.

B+M shall not accept presumption of fault (section 1298 of the Austrian Civil Code) within the limits permitted by law.

Liability for damages by B+M with respect to the customer's clients shall be equally unacceptable as those with respect to the customer. The customer shall therefore in the event of a resale be obliged to limit any existing damage claims accordingly.

Should B+M be liable jointly and severally with the customer and/or the customer's marketing successors pursuant to the provisions of the Product Liability Act, B+M shall have a right of recourse against any of them, if it cannot be proven that the liability-creating product defect existed before B+M marketed the product and/or the duty to warn was not violated.

In the event of exportation of the goods to countries outside the European Union, any damages and warranty claims shall not be accepted as far as is permitted, unless B+M agrees in writing to the exportation to the country named.

## 9. Withdrawal from contract:

B+M – without prejudice to other contractual or statutory rights – shall in any event be entitled to withdraw in the following cases: Should bankruptcy or composition proceedings be instituted over the assets of the customer, B+M shall be entitled to cancel the contract without granting any additional period. Until delivery of the goods, B+M shall also be entitled to withdraw from the contract at any time should B+M have made any error on a material point when estimating the costs of the offer or furnishing price information, and the customer shall not be entitled to any claims against B+M as a result.

## 10. Invalidity:

Should one or several clause(s) or subclause(s) of these Conditions of Sale and Delivery be invalid, this will not affect the validity of the remaining provisions of these Conditions of Sale and Delivery. Any invalid clauses or subclauses shall be substituted by such provisions which, in meaning and purpose, come as close as possible to the invalid provision. These Conditions of Sale and Delivery are an integral part of each sales contract entered into with B+M. Terms and conditions of business of whatever kind, in particular any conditions of purchase, which conflict with the present Conditions of Sale and Delivery shall be invalid in their entirety.

## 11. Choice of law, place of jurisdiction:

The legal relationships between B+M and the customer shall be governed solely by Austrian law by exclusion of the UN Sales Convention. Any and all legal disputes arising from these legal relationships shall be, as far as is permitted, subject to the exclusive jurisdiction of the Vienna Inner City Courts having commercial jurisdiction.

## 12. Data protection:

Data associated with the business relationship (in particular name, address, telephone number, facsimile number, e-mail addresses, and order, delivery and invoice addresses, order date, goods or services ordered and delivered, number of items, prices, delivery dates, payment and warning for payment data, etc.) are stored and further processed in the EDP system at B+M.

The customer expressly authorizes B+M to obtain information about the customer, in particular the financial situation, from third parties (e.g. banks or creditor protection agencies) and to process such data by automatic means. The customer shall at any time upon request release any third party from banking secrecy or other secrecy obligations. The customer expressly agrees that any and all data concerning the customer or an affiliated company in a group (including balance-sheet data) are transmitted to insurance companies, as far as this is necessary for insuring claims against the customer, and creditor protection agencies for the purpose of keeping, merging and disclosing data and the safeguarding of credit protection interests and banking details to assess claims and other risk assessment.

The customer expressly authorizes B+M to disclose address, telephone, facsimile, e-mail and other company data (registered office, companies register number) and statistics on orders concerning the customer to third parties.

## 13. Disclosure pursuant to Accounting Act:

Baustoff + Metall Ges.m.b.H., registered office: Vienna, Companies Register No. 70656g with Vienna Commercial Court

