

## BMZ GERMANY GMBH

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### Terms of sale and delivery

#### I. General provisions

Our deliveries and other services are exclusively subject to the following terms and conditions.

The buyer's general terms and conditions shall only apply insofar as BMZ has expressly agreed to them in writing.

#### II Conclusion of contract, written form

- (1) The scope of the deliveries shall be determined by the mutually agreed written declarations. This shall apply to all essential parts of the contract. Oral declarations shall only be valid if confirmed in writing by an employee of BMZ who is authorised to represent BMZ. 2.
- (2) If the agreements concluded with us contain agreements on specifications or conditions tailored to the individual case, these shall take precedence over any objective requirements. Objective requirements shall take a back seat to the concrete contractual agreements.

#### III Prices, terms of payment and set-off

- (1) The prices are ex works excluding packaging plus the statutory value added tax applicable at the time.
- (2) If BMZ experiences unforeseen price increases after conclusion of the contract for which BMZ is not responsible, BMZ shall be entitled to pass on these price increases to the customer at its reasonable discretion. BMZ shall provide evidence of the price increase.
- (3) Payments shall be made free BMZ's paying agent.
- (4) The buyer can only offset such claims which are undisputed or have been legally established or which are counterclaims from the same contractual relationship. The same applies to the assertion of a right of retention or a right of reduction. The purchaser reserves the right to reclaim payments made.

#### IV Retention of title

- (1) The delivery items (goods subject to retention of title) shall remain the property of BMZ until all claims to which we are entitled against the customer under the business relationship have been satisfied. The cover limit is 110% of the secured claims. If this is exceeded, there shall be a claim for release.
- (2) The purchaser is entitled to resell the goods subject to retention of title in the normal course of business. The customer hereby assigns to BMZ the claims against the buyer from the resale of the reserved goods in the amount of the final invoice amount agreed with BMZ (including value added tax). This assignment shall apply irrespective of whether the object of sale has been resold without or after processing. In the event of processing, the parties agree that in the event of processing of the goods, BMZ shall acquire a co-ownership right in the newly created goods in the amount of our claim. The buyer shall remain authorised to collect the claim even after the assignment. Our authority to collect the claim ourselves shall remain unaffected. However, BMZ shall not collect the claim as long as the customer meets his payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have not been suspended.
- (3) In the event of seizures, confiscations or other dispositions or interventions by third parties, the buyer shall notify BMZ without delay.
- (4) In the event of breaches of duty by the buyer, in particular in the event of default in payment, BMZ shall be entitled to withdraw from the contract in addition to taking back the goods after the unsuccessful expiry of a reasonable deadline set for the buyer to

perform; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The customer agrees to surrender the goods. The taking back or assertion of the reservation of title or the seizure of the reserved goods by BMZ shall not constitute a withdrawal from the agreement unless we expressly declare this.

#### V. Deliveries; Force Majeure, Reservation of Self-Delivery

- (1) Compliance with deadlines for deliveries presupposes the timely receipt of all documents to be supplied by the purchaser, necessary approvals and releases, in particular of plans, as well as compliance with the agreed terms of payment and other obligations by the purchaser. If these preconditions are not fulfilled in time, the periods shall be extended accordingly. Delivery dates and delivery periods are only binding if they have been expressly designated as such in the agreement.
- (2) If non-compliance with the deadlines is due to force majeure, e.g. epidemics, pandemics, official measures, mobilisation, war, riots, strikes, lockouts or similar events, the deadlines shall be extended accordingly. The same shall apply in the event that BMZ is not supplied in due time or in due form for delivery items that BMZ does not manufacture itself.
- (3) The buyer shall be obliged to declare within a reasonable period of time at BMZ's request whether he will withdraw from the agreement due to the delay in delivery or insist on delivery. If dispatch or delivery is delayed at the request of the buyer by more than one month after notification of readiness for dispatch, the buyer may be charged storage costs amounting to 0.5 % of the price of the subject matters of the deliveries for each additional month or part thereof, but not exceeding a total of 5 %. The contracting parties are at liberty to prove higher or lower storage costs.
- (4) Partial deliveries shall be permissible insofar as they are reasonable for the customer.
- (5) BMZ shall be released from its obligation to perform and shall be entitled to withdraw from orders insofar as we have placed orders with reliable suppliers for the materials required for the production of the subject matter of the contract which are identical in terms of coverage and have not received them through no fault of our own. A delay in delivery based on this is not our fault. We shall inform the customer without delay of the non-timely availability of the materials and, if we wish to withdraw for this reason, exercise the right of cancellation without delay. As a result of the supplier's information, the customer shall also have a right of cancellation with regard to the affected order.

#### VI. Place of performance, transfer of risk, insurance

- (1) The place of performance and fulfilment for the delivery of the goods shall be the BMZ production plant specified in the order. Incoterms 2020, EXW Karlstein shall apply.
- (2) The risk shall pass to the customer even in the case of carriage-paid delivery: as soon as the goods have been dispatched or collected.
- (3) At the request and expense of the customer, BMZ shall insure deliveries against the usual transport risks.

#### VII. Acceptance

The buyer may not refuse to accept deliveries due to insignificant defects.

#### VIII Material defects

We shall be liable for material defects as follows.

- (1) Notifications of defects must be made in writing without delay.
- (2) If the product is manufactured in accordance with the specifications provided by the purchaser, the question of freedom from defects shall be based solely on compliance with the specifications. Objective characteristics are then irrelevant.
- (3) The customer shall inspect the goods upon receipt in accordance with the requirements of § 377 of the German Commercial Code (HGB), in particular also for completeness and external damage, and shall give notice of defects without delay. The period of notice for obvious defects is 3 days, for hidden defects 14 days from receipt of the goods by the customer.
- (4) The warranty period in B2B business is 13 months from the date of manufacture.
- (5) All those parts or services which show a material defect shall, at BMZ's discretion, be repaired, redelivered or provided again free of charge, provided that the cause of the defect already existed at the time of the transfer of risk. BMZ shall be entitled to a right of inspection in the event of any notice of material defect. For this purpose, the customer agrees to

return the subject matter concerned to BMZ. Replaced products shall be returned to BMZ upon request.

- (6) The provisions of §§ 478, 479 BGB (German Civil Code) shall only apply if the buyer has sold the goods unassembled to an end consumer.
- (7) Insofar as goods have been sold to an end consumer, BMZ shall be directly liable to the end consumer for material defects in accordance with paragraph 6. The buyer agrees to forward any notices of defect directly to BMZ in writing for processing. If the buyer does not forward the notice of defects to BMZ, BMZ's liability for material defects vis-à-vis the buyer shall be excluded pursuant to § 478 BGB (German Civil Code). Agreements concluded by the buyer with the end consumer beyond the statutory warranty provisions shall not bind BMZ. Notifications of defects by the buyer must be made in writing without delay.
- (8) If the notification of defects is unjustified, BMZ shall be entitled to demand a flat-rate complaint fee of € 75. The buyer can prove that BMZ did not incur damages in this amount. BMZ reserves the right to assert a claim for concrete damages incurred.
- (9) Claims for defects shall not exist in the case of only insignificant deviation from the agreed quality, in the case of only insignificant impairment of usability, in the case of natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating materials, as well as in the case of non-reproducible software errors. If the purchaser or third parties make changes without our consent and release, no claims for defects shall exist for these and the resulting consequences. 10.
- (10) Claims by the customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, shall be excluded insofar as the expenses are increased because the subject matter of the delivery has subsequently been taken to a place other than the customer's place of business.

#### **IX. Industrial property rights and copyrights; defects of title**

- (1) BMZ reserves the unrestricted property rights and copyrights to cost estimates, drawings and other documents (hereinafter referred to as documents). The documents may only be made accessible to third parties with prior consent and, if the order is not placed with BMZ, must be returned to BMZ immediately upon request. Sentences 1 and 2 shall apply accordingly to documents of the buyer; these may, however, be made accessible to third parties to whom BMZ has permissibly assigned deliveries.
- (2) Unless otherwise agreed, BMZ shall be obliged to make the delivery free of industrial property rights and copyrights of third parties (hereinafter: property rights) only in the country of the place of delivery. If a third party asserts justified claims against the buyer due to the infringement of property rights by deliveries made by BMZ and used in accordance with the contract, BMZ shall be liable to the buyer within the period stipulated in Art. VII No. 3 as follows:
  - a) BMZ shall, at its discretion and at its own expense, either obtain a right of use for the deliveries concerned, modify them in such a way that the property right is not infringed, or replace them.
  - b) BMZ's obligation to pay damages shall be governed by Art. X.
- (3) The aforementioned obligations of BMZ shall only exist insofar as the orderer immediately notifies us in writing of the claims asserted by the third party, does not acknowledge an infringement and all defence measures and settlement negotiations remain reserved for us. If the orderer discontinues the use of the delivery for reasons of mitigation of damages or other important reasons, it shall agree to point out to the third party that the discontinuation of use does not constitute an acknowledgement of an infringement of property rights.
- (4) Claims of the customer are excluded insofar as the customer is responsible for the infringement of the property right. Claims of the buyer shall also be excluded if the infringement of property rights is caused by special specifications of the buyer, by an application not foreseeable by BMZ or by the fact that the delivery is modified by the buyer or used together with products not supplied by BMZ.
- (5) In the event of infringements of industrial property rights, the claims of the buyer regulated in no. 2 a) shall otherwise be governed by the provisions of Art. II. No. 3 and VII No. 5 shall apply accordingly. BMZ shall be granted the right to rectify the defect.
- (6) In the event of other defects of title, the provisions of Art. VIII shall apply accordingly.
- (7) Any further liability shall be governed by paragraph XI.

#### **X. Impossibility; Adjustment of Contract**

If unforeseeable events within the meaning of Art. IV No. 2 significantly change the economic significance or the content of the delivery or have a significant effect on BMZ's operations, the agreement shall be adjusted appropriately in good faith. Insofar as this is not economically justifiable, BMZ shall have the right to withdraw from the agreement. If BMZ intends to make use of this right of cancellation, BMZ shall notify the customer thereof without undue delay after having become aware of the

consequences of the event, even if an extension of the delivery period had initially been agreed with the customer.

#### **XI. Liability**

- (1) BMZ shall only be liable in accordance with the following provisions:
  - a) Unrestrictedly in accordance with the statutory provisions
    - for damage to life, body and health,
    - as well as for damages covered by liability under the Product Liability Act;
    - as well as for damages based on intentional or grossly negligent breaches of contract;
    - as well as fraudulent intent
  - b) BMZ shall also be liable for damage caused by simple negligence, insofar as this negligence concerns the breach of such contractual obligations, compliance with which is of particular importance for achieving the purpose of the contract. The same shall apply if the customer is entitled to claims for damages instead of performance. However, BMZ shall only be liable insofar as the damages are typically associated with the agreement and are foreseeable.
  - c) Claims for damages based on an intentional or negligent breach of essential contractual obligations shall be limited to the foreseeable damage typical for the contract.
  - d) The above liability provisions shall also apply with regard to the liability of the supplier for its vicarious agents and legal representatives.
- (2) Any further claims for damages are excluded.

#### **XII. Limitation**

- (1) All claims of the purchaser - on whatever legal grounds - shall become statute-barred after 12 months, unless otherwise stipulated in paragraph 2. The limitation period begins with the receipt of the goods by the customer.
- (2) The statutory periods shall apply in the case of intentional or fraudulent conduct, in the case of culpable injury to life, limb and health and in the case of claims under the Product Liability Act. Insofar as new rights of the customer arise due to material defects within the scope of the rectification of defects by BMZ, all claims shall become statute-barred at the latest 24 months after delivery of the original goods.

#### **XIII Place of jurisdiction and applicable law**

- (1) If the customer is a merchant, the sole place of jurisdiction shall be the Regional Court of Frankfurt.
- (2) Legal relations in connection with this agreement shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and German international private law.

#### **XVI Written form, severability clause**

- (1) Amendments or supplements to this agreement must be made in writing. If they do not comply with this requirement, they shall be null and void. This also applies to amendments to this written form clause.
- (2) Should individual parts of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions. Invalid provisions shall be replaced by provisions which, in the exercise of reasonable discretion, come as close as possible to the economic intention.

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