

## **B-SAFETY GmbH AGB - General Terms and Conditions of Sale and Delivery for Contracts with Entrepreneurs, Legal Entities under Public Law and Special Assets under Public Law**

In the following, B-SAFETY GmbH is referred to as "B-SAFETY" and the party that purchasing from BSAFETY or is in a pre-contractual relationship with B-SAFETY regarding a purchase of B-SAFETY is hereinafter referred to as "BUYER".

These general terms and conditions of sale and delivery are hereinafter referred to as "CONDITIONS".

### **1. Scope of Application**

These CONDITIONS are applicable to all offers, acceptance of offers, sales, deliveries and services. They shall also apply to all future business relations, even if they are not expressly agreed again. They shall apply to entrepreneurs within the meaning of § 14 BGB, 310 BGB (German Civil Code), legal entities under public law and special funds under public law; they shall apply to other persons to the extent permitted by law. Any deviating conditions of the BUYER shall be opposed; such conditions shall only become effective if BSAFETY expressly agrees to them in writing.

### **2. Offers, Conclusion of Contract and Condition of Goods, further Export**

(1) All offers are subject to confirmation and are subject to availability, timely receipt of material and the granting of cover by B-SAFETY's trade credit insurance policy. Catalogues and other sales documents and presentations of B-SAFETY - also in electronic form - apply merely as an invitation to place an order. (2) The order by the BUYER constitutes a binding offer to conclude a purchase contract. Orders of the BUYER shall only be deemed accepted by B-SAFETY if they are confirmed by B-SAFETY within 30 days in writing or by e-mail by means of an express declaration of acceptance or if they are executed as soon as the order has been received, in which case the invoice shall be deemed as order confirmation.

(3) Any verbal declarations or assurances made by B-SAFETY's sales employees or commercial agents which go beyond the written contract or order confirmation shall only apply if confirmed in writing by BSAFETY. This shall not apply to declarations made by persons who are authorized to represent BSAFETY without limitation or unlimited representation towards the outside.

(4) Quantity, quality and description as well as any specifications of the goods shall be based on B-SAFETY's offer if accepted by the BUYER or B-SAFETY's valid catalogue in connection with B-SAFETY's order confirmation in the event of an order by the BUYER. Offers and price lists shall be treated confidentially and may not be made accessible to third parties without the prior consent of B-SAFETY.

(5) B-SAFETY may correct obvious or erroneous errors in catalogues, price lists, offer documents or other documentation without this giving rise to any claims on the part of the BUYER.

(6) B-SAFETY reserves the right to modify or improve the goods without notifying the BUYER, provided that legal requirements are to be taken into account and/or provided that this does not result in any lasting deterioration in quality, function or usability. The BUYER shall have no claims whatsoever on account of such changes.

(7) Any further export of the delivered goods requires the express consent of B-SAFETY. This does not apply to resales in member states of the European Union and the states of the EEA Agreement.

### **3. Cancellation and Return of Goods**

The cancellation of a validly concluded contract, possibly in connection with the return of goods already delivered, requires the express agreement between B-SAFETY and BUYER. In the case of goods specially manufactured or procured for the BUYER, cancellation of the contract and return of goods already delivered

free of defects is generally excluded. In the event of cancellation by the BUYER of orders already recorded by B-SAFETY, a cancellation fee shall be payable. In the case of productions to be carried out on customer's order, this shall amount to 50% of the order value, otherwise there shall be a fee of 15% of the order value. The BUYER has the burden of proof to justify lower cancellation charges. If the BUYER returns unsolicited goods to B-SAFETY, the acceptance of the goods shall not constitute agreement with the BUYER's request for withdrawal. B-SAFETY shall declare such in writing.

#### **4. Purchase Price and Terms of Payment, Payment Delay**

- (1) The purchase price shall be based on the offer or order confirmation of B-SAFETY or, in the event of no express price offer, on the price list valid for the BUYER on the day of conclusion of the contract. The agreed price shall be in EURO. All prices quoted in any sales documents are subject to change without notice, plus statutory value added tax and packaging costs as well as ex works (subject to "INCOTERMS 2010"), unless otherwise agreed in writing. The deduction of cash discount shall require a special written agreement.
- (2) In the event that more than two months elapse between conclusion of contract and delivery, B-SAFETY reserves the right to increase the price by notifying the BUYER prior to delivery of the goods in order to pass on increases in the costs for B-SAFETY which are beyond its control, such as in particular changes in exchange rates or customs rates, or more than 10% increases in material or manufacturing costs.
- (3) Payments should only be made by bank transfer. Bills of exchange, cheques and other payments do not constitute fulfilment of the payment obligation as long as B-SAFETY has not irrevocably and finally obtained disposal of the payment amount. Discount charges shall be borne by the BUYER.
- (4) In the event that the opening of a documentary letter of credit by the BUYER is agreed, this shall be done in accordance with the General Guidelines and Customs for Documentary Letters of Credit, Revision 1993, ICC Publication No. 500. All costs incurred in connection with the documentary letter of credit shall be borne by the BUYER.
- (5) Unless otherwise agreed, the BUYER shall pay the full purchase price immediately after the invoice date. In this respect, default occurs without reminder. If B-SAFETY becomes aware, after conclusion of the contract, of facts which, according to its dutiful commercial judgement, indicate a substantial deterioration of assets or credit, in particular late payment to other suppliers, B-SAFETY shall be entitled to demand advance payment or securities and, in the event of refusal, to withdraw from the contract, whereby payments for partial services already rendered shall become due immediately.
- (6) If the BUYER is in default with his payment obligation, all other claims shall immediately become due for payment without any separate notice of default being required. Furthermore, B-SAFETY shall be entitled - without prejudice to other claims or rights at its discretion - to terminate the contract or withdraw from it, to demand damages for non-performance and/or to suspend further deliveries to the BUYER or to demand advance payment thereof or to demand interest at the statutory rate (base interest rate plus 8%) from the due date until full payment of the claim and to suspend further deliveries to the BUYER. The BUYER shall be entitled to prove that the delay caused no damage or a lower damage.
- (7) B-SAFETY is entitled to withdraw from the contract and to claim damages if the BUYER has finally refused to accept the goods or has not accepted the goods after setting a further period of at least five days.
- (8) If the BUYER is in delay with payment or a bill of exchange is not converted to payment by the deadline, B-SAFETY is entitled to take back the products. The BUYER already at this point agrees that B-SAFETY, if applicable, may enter his premises to collect the products. B-SAFETY can furthermore, forbid the further sale and disposal of the products. The retrieval of the products does not represent a withdrawal from the contract. If the products, on the other hand, were delivered in the course of an individual order outside of a business relationship, B-SAFETY is obliged to withdraw from the contract in advance. The BUYER may, however, avert the legal consequences by paying a security in the amount of the endangered payment claim.
- (9) It is expressly agreed that all costs of legal action by B-SAFETY in the event of default of payment by the BUYER, both judicial and extrajudicial, e.g. for a collection agency, shall be reimbursed by the BUYER.

- (10) The BUYER may only set off undisputed or legally established claims; any further offsetting by the BUYER is excluded. Refusal of services and retention rights of the BUYER are excluded insofar as these are based on another contractual relationship, in particular on another purchase contract or not based on undisputed or legally established claims or attributable to gross negligence on the part of B-SAFETY. In the case of minor defects as compared to the purchase price refusal to pay the purchase price is excluded.

## **5. Delivery of Goods**

- (1) Goods shall be delivered ex works in accordance with the "INCOTERMS 2010".
- (2) Partial deliveries to which B-SAFETY is principally entitled without advance notification to the BUYER, are to be viewed as deliveries as such, which can also be invoiced separately.
- (3) Unless a written promise of a sales employee of B-SAFETY expressly designated as binding or a verbal promise of persons authorized to represent B-SAFETY without limitation or to represent B-SAFETY in an outwardly unlimited manner has been made, delivery dates and periods shall not be deemed to have been agreed as binding.
- (4) Delivery periods shall be reasonably extended - also within a contract - in the event of force majeure, strikes, lockouts, interventions by national or international authorities as well as all unforeseeable obstacles occurring after conclusion of the contract for which B-SAFETY is not responsible, insofar as such obstacles demonstrably have a considerable influence on the delivery. This shall also apply if these circumstances occur at B-SAFETY's suppliers or their sub-suppliers. The provisions relating to such special circumstances shall apply accordingly to the BUYER. Claims for damages shall be excluded in such cases.
- (5) Compliance with the delivery date presupposes the timely and proper fulfilment of the BUYER's obligations. If the BUYER is in default of acceptance or violates other obligations to cooperate, B-SAFETY shall be entitled to claim damages. Upon default of acceptance, the risk of accidental deterioration or destruction shall pass to the BUYER.
- (6) If goods are handed over by a carrier damaged in any way or if goods are missing, the BUYER shall immediately demand a corresponding written confirmation from him. Confirmation of complete and orderly hand-over by the freight carrier count against the BUYER. In the case of rail and postal dispatch, an official damage assessment must be carried out.

## **6. Dispatch, Passing of Risk**

- (1) The means and route of shipment as well as packaging shall be at the discretion of B-SAFETY.
- (2) The BUYER shall bear the costs of shipment unless otherwise agreed.
- (3) The risk of deterioration, destruction or loss of the goods shall pass to the BUYER as follows:
  - a. In the case of delivery ex works ("INCOTERMS 2010"), at the time B-SAFETY informs the BUYER that the goods are ready for collection.
  - b. In the case of shipment by B-SAFETY to another location, at the time when B-SAFETY hands over the goods to the carrier or indicates readiness to do so.
  - c. In the event of an agreement under which B-SAFETY shall exceptionally deliver the goods at its own risk to a place other than its registered office, at the time of delivery or, if the BUYER is in default of acceptance, at the time when B-SAFETY offers the goods. In this case B-SAFETY shall store the goods at the BUYER's expense and risk.

## **7. Retention of Title**

- (1) Ownership of the goods shall not pass to the BUYER until the entire purchase price and all other liabilities arising from the business relationship have been paid in full, including all current account balance claims.

This shall also apply if the BUYER makes payments on claims specifically designated by him. The inclusion of individual claims in a current account or the recognition of a balance shall not cancel the reservation of ownership. Goods to which B-SAFETY is entitled to (co-)ownership shall hereinafter be referred to as reserved goods.

- (2) Until full payment has been made, B-SAFETY shall be entitled, in the event that the BUYER is in default with a payment obligation, to reclaim the reserved goods, sell them elsewhere or dispose of them in any other way.
- (3) The BUYER shall at all times keep and store the reserved goods on a fiduciary basis and free of charge for B-SAFETY separately from its property and that of third parties in a proper, secure, insured manner and marked as the property of B-SAFETY. Insofar as maintenance and inspection work becomes necessary, the BUYER shall carry it out in good time at its own expense.
- (4) If reserved goods are further processed or otherwise combined or mixed with items to which B-SAFETY has no ownership, B-SAFETY shall be entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods and the processing value. If BSAFETY's ownership expires due to combination, mixing or processing, the BUYER shall transfer to BSAFETY at the time of the conclusion of the contract the BUYER's ownership rights to the new object to the extent of the invoice value of the reserved goods. The provisions for reserved goods pursuant to Sections 7.1 to 7.3 shall again apply to the resulting partial or co-ownership rights.
- (5) The BUYER may use or resell the reserved goods in the ordinary course of business as long as he is not in default. Pledging or transfer by way of security is not permitted.
- (6) The BUYER hereby assigns as security to B-SAFETY, which accepts this assignment, all claims arising from the use or sale, including any insurance or compensation payments and all current account balance claims.
- (7) The BUYER shall not be entitled to assign the claim again. An assignment by way of true factoring shall only be permitted if B-SAFETY is notified of this with notification of the factoring bank and the accounts held there by the BUYER and the factoring proceeds exceed the value of the secured claim of BSAFETY. The claim of B-SAFETY shall become due immediately upon crediting of the factoring proceeds.
- (8) B-SAFETY revocably authorizes the BUYER to collect the assigned claims or services in its own name and for its own account. This authorization to collect may only be revoked if the BUYER does not properly meet his payment obligations. At B-SAFETY's request, the BUYER shall be obliged to inform its customers immediately of the assignment to B-SAFETY - unless B-SAFETY itself does so - and to provide BSAFETY with the information and documents required for collection.
- (9) The BUYER shall keep in trust and free of charge for B-SAFETY any payment or other object received on the basis of the direct debit authorization separately from its assets and those of third parties. They shall serve as security for B-SAFETY to the same extent as the reserved goods.
- (10) In the case of payment by cheque, ownership of this transfers to B-SAFETY as soon as it is acquired by the BUYER. If payment is made by bill of exchange, the BUYER hereby assigns to B-SAFETY in advance the rights arising therefrom, which B-SAFETY accepts. The transfer of these documents shall be effected by the BUYER keeping them in safe custody for B-SAFETY or, if he does not acquire direct possession of them, by the BUYER herewith assigning in advance to B-SAFETY his claim for surrender against third parties; he shall surrender these documents, together with his endorsement, to B-SAFETY without undue delay.
- (11) In the event of pledging or other interventions by third parties in the (co-)ownership of B-SAFETY, the BUYER shall draw attention to the ownership of B-SAFETY and shall notify B-SAFETY without delay of any access by third parties to the goods delivered under retention of title, together with the documents justifying such access, so that B-SAFETY can assert its rights. The BUYER undertakes to immediately send B-SAFETY a copy of the pledging report. Insofar as the third party is not in a position to reimburse B-SAFETY for the judicial or extrajudicial costs incurred in this connection, the BUYER shall be liable for such costs. In the case of non-fulfilment of the obligation to inform and duty of notification the BUYER is liable for all damaged incurred for B-SAFETY.
- (12) The taking back or seizure of the reserved goods by B-SAFETY does not constitute a withdrawal from the contract.



- (13) B-SAFETY undertakes, at the request of the BUYER, to release the securities to which it is entitled to the extent that the realisable value of the securities exceeds the claims to which B-SAFETY is entitled by more than 20%. The securities to be released shall be selected solely by B-SAFETY.

## 8. Warranty and Exclusion of Liability

For defects within the meaning of § 434 BGB B-SAFETY warrants for sold goods and is liable according to the following provisions:

- B-SAFETY's liability for defects shall be based primarily on the agreement reached regarding the quality of the goods. All product descriptions and manufacturer information which are the subject of the individual contract or which were made public by B-SAFETY (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the goods. If the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (§ 434 para. 1 sentences 2 and 3 BGB). However, B-SAFETY accepts no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) which the BUYER has not pointed out to us as decisive for his purchase.
- The BUYER shall inspect the delivered goods in accordance with § 377 HGB (German Commercial Code) and, as a matter of principle, raise any complaints immediately, but in any case prior to resale or processing, in writing and specified. Further legal obligations remain unaffected.
- If the BUYER discovers defects in the goods, he may not dispose of them without the consent of BSAFETY if this threatens to cause major damage. Liability for consequential damages is excluded unless B-SAFETY has caused the damage intentionally or by gross negligence.
- The BUYER shall be obliged to provide B-SAFETY with the object of sale or samples thereof for which a complaint has been made at its request. In the event of culpable refusal, the warranty shall lapse. Replaced items or parts become the property of B-SAFETY.
- B-SAFETY shall not be liable for the suitability of the goods for a specific purpose, except in the case of a written declaration.
- B-SAFETY shall not be liable for defects or damage in the delivery of goods which have been manufactured in accordance with the specifications of the BUYER, which are based on a description, specification, design or construction documents of the BUYER or which are clearly tailored to the personal needs of the BUYER, unless B-SAFETY was able to recognize their defects without additional examination. The same shall apply to defects or damage caused by parts, materials or other equipment provided by the BUYER or manufactured by third parties on its behalf. This shall not apply if the defect occurs due to material provided by B-SAFETY or processing carried out by B-SAFETY.
- B-SAFETY does not provide any warranty and shall not be liable for defects or damage resulting from installation, connection, operation, use or similar actions by the BUYER or third parties commissioned by the BUYER which are contrary to the terms of the contract, incorrect or improper. The inappropriateness and breach of contract shall be determined in particular by the manufacturer's specifications. The warranty shall be excluded if the goods delivered by B-SAFETY have been handled or modified by third parties without the consent of B-SAFETY, or if the operating instructions are not followed.
- In the event of justified complaints, B-SAFETY shall be entitled to determine the type of subsequent performance (remedy of the defect, replacement delivery) taking into account the nature of the defect and the justified interests of the BUYER. The BUYER may only reduce the purchase price or withdraw from the contract if B-SAFETY's attempt at subsequent performance on the basis of the same defect fails or is refused on the second attempt. B-SAFETY is entitled to make the owed subsequent performance dependent on the BUYER paying the due purchase price. However, the BUYER shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.
- The BUYER shall inform B-SAFETY immediately of any warranty claim arising for a consumer.
- The BUYER shall give B-SAFETY the time and opportunity necessary for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes.
- Prior to the return of defective goods, the BUYER shall request a written confirmation of return from BSAFETY.

- In order to verify the warranty claim, the BUYER shall submit at least a copy of the proof of purchase. If the BUYER fails to provide such proof of warranty, B-SAFETY shall return the goods unrepaired for a reasonable handling fee.
- Without a correct and detailed description of the defect, B-SAFETY shall not be liable for the faultless execution of the repair. General information, such as "defective", is not sufficient.
- The goods shall be sent in original or appropriate packaging. Costs and damages caused by improper packaging shall be borne by the BUYER.
- B-SAFETY shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions, if a defect actually exists. In other cases, B-SAFETY may demand compensation from the BUYER for the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs).
- Warranty claims are only due to the BUYER and are not assignable.
- B-SAFETY reserves the right to make design changes at any time. However, B-SAFETY shall not be obliged to make or communicate such changes to goods already delivered.
- Rights of recourse pursuant to §§ 478, 479 BGB (German Civil Code) shall only exist if the consumer was entitled to assert claims and only to the extent permitted by law and not, however, for goodwill settlements not agreed with B-SAFETY. Furthermore, they presuppose that the party entitled to recourse observes its own duties, in particular the duty to give notice of defects.
- The general limitation of liability pursuant to No. 9 below shall apply to claims for damages.

## 9. General Limitation of Liability

- (1) Unless otherwise stated in these General Terms and Conditions of Sale and Delivery including the following provisions, B-SAFETY shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- (2) B-SAFETY shall be liable for damages - for whatever legal reason - within the scope of its liability in cases of intent and gross negligence. In the event of ordinary negligence, B-SAFETY shall be liable, subject to statutory limitations of liability (e.g. due care in its own affairs; minor breach of duty), only for
  - a. for damages resulting from injury to life, body or health,
  - b. for damages resulting from the breach of an essential contractual obligation (obligation the fulfilment of which is essential for the proper performance of the contract and the fulfilment of which the contracting party regularly relies on and may rely on); in this case, however, the liability of B-SAFETY shall be limited to compensation for the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from para. 2 shall also apply in case of breaches of duty by or for the benefit of persons whose fault B-SAFETY is responsible for in accordance with statutory provisions. They shall not apply if B-SAFETY fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the BUYER under the Product Liability Act.
- (4) The BUYER may only withdraw or terminate due to a breach of duty which does not consist in a defect if B-SAFETY is responsible for the breach of duty. A free right of termination of the BUYER (in particular according to §§ 650, 648 BGB) is excluded. Otherwise, the statutory prerequisites and legal consequences shall apply.

## 10. Statute of Limitations

- (1) Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.
- (2) If, however, the goods are a building or an object which has been used for a building in accordance with its usual use and which has caused its defectiveness (building material), the limitation period in accordance with the General Terms and Conditions of B-SAFETY shall be 5 years from delivery in

accordance with the statutory provisions (§ 438 para. 1 no. 2 BGB). Other special statutory provisions regarding the statute of limitations (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB) shall also remain unaffected.

- (3) The foregoing limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages by the BUYER based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the BUYER arising from intent and gross negligence and for damages arising from injury to life, limb or health) as well as according to the Product Liability Act shall, however, become statute-barred exclusively according to the statutory limitation periods.

## **11. Industrial Property Rights**

- (1) B-SAFETY's drafts on behalf of B-SAFETY may not be made accessible to third parties, in particular competitors, under any circumstances. If this obligation is disregarded, the BUYER shall be liable for all disadvantages suffered by B-SAFETY as a result of the use of the samples by unauthorized persons.
- (2) The BUYER shall be liable for any infringement of third-party industrial property rights if the production and delivery of objects were carried out by B-SAFETY in accordance with its instructions. He undertakes to indemnify B-SAFETY immediately against any claims for damages by third parties in the event of an infringement of the industrial property rights of third parties caused thereby and to compensate BSAFETY for any further damage it incurs in connection with legal proceedings against third parties or in the context of the settlement of such legal disputes, in particular as a result of necessary or reasonable expenses.
- (3) The objects sold by B-SAFETY shall be used for its own advertising purposes. Should the BUYER have a legitimate interest in keeping the items manufactured for him confidential, B-SAFETY shall only be obliged to do so if a corresponding agreement has been made at the latest upon conclusion of the contract.

## **12. Tools**

Tools for special articles which are manufactured by B-SAFETY or by third parties on its behalf are the property of B-SAFETY due to design performance and the utilization of internal manufacturing experience, even if the BUYER bears (pro rata) the costs of manufacture or if the use is exclusively for orders of the BUYER due to corresponding agreement. Storage shall be voluntary, whereby even tools owned by the BUYER shall only be subject to a duty of care as in its own affairs. In the event of non-payment of the delivered goods, BSAFETY has a right of retention to the tools owned by the BUYER.

## **13. Contractual Language; Applicable Law; Place of Performance and Jurisdiction; Legal Consequences in Case of Non-Inclusion and Invalidity of General Terms and Conditions of Sale and Delivery**

- (1) The contract language shall be German. Therefore, only the German version of these General Terms and Conditions of Sale and Delivery shall be authoritative.
- (2) German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods, even if the deliveries are made directly by a foreign supplier affiliated with B-SAFETY. In particular, the validity of these General Terms and Conditions of Sale and Delivery shall be governed exclusively by German law.
- (3) The place of performance and exclusive place of jurisdiction for all disputes arising from the contractual relationship between the BUYER and B-SAFETY (including actions on cheques or bills of exchange) shall be the registered office of B-SAFETY. B-SAFETY shall also be entitled, at its option, to sue at the court having jurisdiction for the registered office of the BUYER or at any other court which may have

jurisdiction under national or international law. In the event of assignment of claims by B-SAFETY, the assignee shall also have the right to choose the place of jurisdiction.

- (4) If provisions in these General Terms and Conditions of Sale and Delivery have not become an integral part of the contract in whole or in part or have become ineffective, the remaining provisions of the contract shall remain effective. Insofar as provisions in these General Terms and Conditions of Sale and Delivery have not become part of the contract or are invalid, the content of the contract shall be governed by the statutory provisions.

B-SAFETY GmbH  
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