



General Purchasing Conditions of Back Europ Deutschland GmbH & Co. KG

1 Scope

(1) We enter into all contracts and agreements with our suppliers on the basis of our General Purchasing Conditions as set out below. General terms and conditions of business of the supplier that vary herefrom, differ in wording, or supplement these General Purchasing Conditions do not apply unless we have expressly consented in writing to the application thereof. This applies even if we accept the supplier's deliveries without reservations while knowing that the supplier has different terms and conditions of business.

(2) Our General Purchasing Conditions apply only vis-à-vis entrepreneurs as defined by section 14 of the German Civil Code (BGB) and to legal entities governed by public law.

2 Conclusion of the agreement

(1) If we provide the supplier with an offer to conclude an agreement within the meaning of section 145 BGB, the supplier can accept this offer in writing within three days after receipt thereof. After this period expires, we are no longer bound by our offer.

(2) All agreements made between us and the supplier for the purpose of implementing this agreement are set down in their entirety in writing in the agreement, including these General Purchasing Conditions. Our employees are not authorized to make oral promises that go beyond the written contractual agreement.

3 Prices and payment terms

(1) Unless otherwise agreed in writing, the price for the delivery is understood to be "free domicile."

(2) We will pay the purchase price within 14 days, counting from delivery and receipt of the invoice, subject to a 2% prompt payment discount or within 30 days after receipt of the invoice. The beginning of the payment terms requires that the order number be correctly stated in the invoice.

(3) The rights of offsetting and retention are available to us as provided by law.

4 Delivery and default

(1) Unless otherwise agreed in writing, the delivery must be made free domicile. The risk of accidental loss and deterioration shall not pass to us until delivery to us at the destination indicated by us.

(2) The supplier is obligated to state our order number in all shipping documents and delivery orders and in all correspondence. In the event that this number is not stated or that it is stated incorrectly, we are not responsible for any delays in processing or payment of the purchase price that may arise therefrom.

(3) The time determining whether a delivery is made in due time is the time of receipt at the destination indicated by us.

(4) The supplier is obligated to inform us in writing without delay if circumstances that result in its being unable to observe the stipulated delivery period should arise or if it becomes apparent to the supplier that such circumstances will arise. Nothing herein shall affect liability for default.

(5) If the supplier is in default, we are permitted to demand payment of a contractual penalty in the amount of 0.3% of the net price of the goods delivered late per working day, but not more than 5% of the net price of the goods delivered late in total. We are entitled to demand payment of the contractual penalty in addition to fulfillment and as the minimum amount of any damages the supplier may be obliged to pay by law; nothing herein shall affect our claims to compensation for any damage or losses in excess thereof. The entitlement to a contractual penalty shall remain in force even if the delayed performance is accepted without reservations, provided that it is asserted no later than at the time of payment of the purchase price or, in the case of contractually agreed partial payments, by the time of the payment of the final installment.

(6) In all other respects, we are entitled to the statutory claims in the event of default in delivery.

5 Liability for defects

(1) We are entitled to the statutory warranty claims without limitation in the event of material and legal defects. We are, in particular, entitled to demand that the defect be eliminated or that new goods be delivered, at our option. If the cure fails or is unreasonable, or if the supplier refuses to perform it, we are entitled to demand damages subject to the statutory prerequisites and/or to rescind the agreement or reduce the purchase price.

(2) Our obligation to inspect the goods upon delivery is limited to apparent damage occurring in transit and obvious, outwardly apparent defects. We are not obligated to inspect the goods for other defects unless and until so doing is feasible under the circumstances of the usual course of business. Nothing herein shall affect our obligation to report any defects that are identified without delay. The defect report is deemed to have been made without delay and in due time if it is received by the supplier within seven working days.

(3) In the event of a dispute, we are permitted to prove that the goods are defective through an examination conducted by an accredited analysis institution. Nothing herein shall affect any other possibilities of proving this. If the supplier states its consent to the choice of analysis institution, the supplier is required to accept the results of the analysis as being binding on it. If the supplier does not state its consent to the analysis institution we have proposed, the supplier is required to designate a different analysis institution that is accredited in Germany within 48 hours. If we have the analysis performed there, the supplier is required to accept the results as being binding on it. If the results of the analysis show that the goods are defective, the supplier shall bear the costs of the analysis. If the goods turn out to be free of defects, we will bear the costs of the analysis.

(4) The limitation period for warranty claims is 36 months from delivery. The limitation periods for the warranty claims are suspended by our written notice of defects unless the supplier has rejected the claim. In all other respects, the statutory provisions concerning suspension of limitation periods are unaffected.

6 Product liability and producer's liability / indemnification / liability insurance

(1) The supplier is obligated to indemnify us and hold us harmless against claims for damages asserted by third parties due to personal injury or property damage that is based on a fault in the product delivered by the supplier that lies within the supplier's sphere of control and organization and for which the supplier is itself liable vis-à-vis external parties.

(2) Within the scope of its liability within the meaning of para. 1 above, the supplier is also obligated to reimburse any expenses that may arise out of or in connection with any recall performed by us. We will inform the supplier of the content and extent of the recall to be carried out as far as possible and reasonable and give the supplier an opportunity to state its position. Nothing herein shall affect any other statutory claims.

(3) The supplier agrees to maintain product liability insurance, including coverage for damage or loss arising through mixing, with coverage of € 10 million per personal injury/property damage on a lump-sum basis, including recalls; if we have any further claims for damages, such claims are unaffected. The supplier is obligated to provide proof of this insurance to us upon request.

7 Nondisclosure

The supplier agrees to treat company-related information to which the supplier becomes privy within the scope of the negotiations for or implementation of the agreement entered into with us as confidential and not to disclose it to third parties without our consent. This does not apply if the information has become public knowledge without any violation of nondisclosure obligations or to the extent that the supplier is obligated to disclose it due to statutory provisions or orders issued by a court or government agency.

8 Applicable law

German law applies, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

9 Place of jurisdiction; arbitration clause

(1) If the supplier is a merchant (Kaufmann) as defined under German law or a legal entity governed by public law, all disputes arising out of and in connection with the agreement shall be decided on a final basis, at our option, in one of the following ways: (i) by the ordinary courts of law with jurisdiction in the location in which we have our registered office, or (ii) by an arbitral tribunal of Warenverein der Hamburger Börse e.V., or (iii) by an arbitral tribunal pursuant to the arbitration rules of the German Institution of Arbitration (DIS); in cases (ii) and (iii), this shall take place to the exclusion of recourse to the ordinary courts of law. If we choose a decision by an arbitral tribunal, the composition of the tribunal and the arbitral procedure shall be governed by that tribunal's arbitration rules. The language of the arbitration proceedings shall be German.

If we choose arbitration before the DIS arbitral tribunal, the following agreements apply in addition: the place of the arbitration is Cologne.

The number of arbitrators shall be three if the value in dispute exceeds EUR 75,000.00; otherwise, a decision shall be made by one arbitrator.

(2) In the event that the supplier intends to bring a legal action against us, we agree to exercise the option right granted to us pursuant to paragraph 2 above before the litigation, within a reasonable time limit set for us to do so, which must amount to at least three business days. If we do not make a statement within the time limit set for us, the option right shall pass to the supplier. The supplier must make its choice and communicate such choice to us in writing without delay in this case.