

## Conditions of Sale Böllhoff GmbH 12/2005

### 1. General Validity

The following terms and conditions provide the basis for all transactions, including those not specified here, and to the exclusion of all other agreements unless expressly authorized by us in writing. We do not recognize conditions of purchase drawn up by the customer.

### 2. Quotations and Contracts

Orders shall be effective only after we have provided appropriate written acknowledgement of order receipt. Price quotations shall not be legally binding prior to such acknowledgement. Additional agreements, supplements or modifications made verbally, by voice telephone or other telegraphic means shall not be valid until confirmed in writing by us.

With respect to quotations and acknowledgement of orders, we reserve the right to make reasonable adjustments to non-fixed prices, in the event that cost factors (materials, personnel costs, energy and general rates, tariff and transport costs etc.) change significantly after conclusion of contract but prior to delivery. We are not obliged to maintain original prices for follow-up orders.

### 3. Prices and Conditions of Payment

Prices and quoted ex-works, excluding packing.

Occurring taxes, specially VAT (Value Added Tax), and import fees are to be paid by the customer.

Our list prices are valid for deliveries of parts in volumes determined by full original packages or multiples thereof, regardless on any other assigned charges.

Prices will rule at the date of dispatch in line with valid list prices.

Notwithstanding any agreement of discount we are entitled to charge a service lump sum amounting to € 25,- (excl. VAT) for orders with an order value under € 50,- (excl. VAT) in consideration of the necessary treatment expenses.

The right of over or under delivery of 10 % of the total order, will be reserved, particularly for special parts.

### 4. Conditions of Payment

Unless otherwise provided for in our price quotation, payment is to be effected within 14 days of the invoice date with 2 % cash discount or in full within 30 days, without deductions and without withholding claims which are unrecognized or not confirmed by the courts.

Discountable bills of exchange may only be accepted for payment if agreed by prior arrangement. Accounts paid by bills of exchange or cheques are always credited under reservation until payment is received, and regardless of an earlier due date of payment if the ordering party is in default; they are booked the day we are able to draw the covering amount. Non-compliance with the conditions of payment, or circumstances which become known to us after conclusion of contract, and which may reduce the creditworthiness of the ordering party, make all accounts payable to us immediately due, regardless of the terms of any bills of exchange accepted. They also entitle us to make any outstanding delivery against pre-payment or security only, and to withdraw from the contract after reasonable period of notice, or to claim compensation for non-fulfillment, regardless of the right to reclaim delivered products at the expense of the ordering party as specified under Retention of Title below.

### 5. Delivery Period

All delivery periods are estimates, even when not expressly described as such. Each delivery in part is a separate order.

Unless otherwise agreed, the delivery period shall run from the fulfillment of the agreed conditions (receipt of technical specifications, clarification of sample parts, receipt of such payment in advance) and complete clarification of all technical specifications of the order.

The condition for the fulfillment of our obligations to supply goods is the fulfillment by the customer of his contractual obligations.

Should our delivery be in default, the customer is obliged to specify a reasonable additional period by which delivery is to be effected. After expiry of this additional period the customer shall be entitled, to withdraw from the contract in so far as notification of readiness for shipping has not been issued. The customer may not return part deliveries. Claims for compensation due to non-fulfillment or late fulfillment are excluded, unless they are claim gross negligence or intent on our part.

## 6. Shipping

Packing is chosen in accordance with our own professional judgement, unless instructions to the contrary have been received and agreed by us in writing. Packing is returnable only at costs borne by the customer.

Unless otherwise confirmed in acknowledgement of an order, orders are shipped ex works, and always at the expense and liability of the ordering party or customer. Liability, including risk of confiscation, is transferred to the ordering party or customer on handover to the haulage company or transporter, at the latest on departure from the works.

Unless otherwise instructed, the choice of transport routes and methods shall be made at our discretion, and without guarantee of the least expensive and fastest means.

Should good notified as ready for shipping fail to be collected immediately, or should we permanently or intermittently be unable to provide transport for reasons beyond our control, the purchase price shall nevertheless be due for payment. In such circumstances we shall be entitled at our own discretion to warehouse the goods at the expense and liability of the customer.

## 7. Disrupted Delivery

Disruptions of all types, acts of God and due to war, industrial disputes, lock-outs etc. which affect either ourselves or our suppliers, and all other causes and events which prevent provision, production or shipping, shall release us of our delivery obligations for the entire duration of such disturbances, shall include time for recovery from the respective consequences, and shall, if circumstances dictate, entitle us to cancel our afore-mentioned obligation either in part or in whole. The customer shall have no right in such circumstances to withdraw from the contract.

## 8. Warranty and Complaints

Technical advice and information provided by us either in verbal or written form is non-binding – this includes reference to any rights or third parties – and therefore does not release the customer from his obligation to examine our products for suitability for their intended purposes and applications. However, should a case of liability on our part arise, we shall only be committed to provide replacement for the defect item(s) in question.

For wearing parts we don't take on any guarantee.

Does the customer waive in case of an agreed first scrutiny an expressly release or does this release not take place, the orders followed by the first scrutiny or the delivery schedule are considered to be as a release. Do the products delivered by us meet the quality of the first sample they are classified as per agreement.

§ 377 HGB (German Handelsgesetzbuch) are relevant to any deficiency claims, especially to aspects of quality, weight and measurements. Deficiency claims are to be notified to us in writing without delay. The customer is not entitled to postpone the fulfillment of payments unless we have ascertained a defect. The customer has to furnish proof of deficiency.

For defective deliveries we take over the warranty in that all parts, which can be proven to have become unserviceable or considerably restricted in function as a result of circumstances prior to the transfer of risk – particularly as a result of defective construction, poor quality material or workmanship

– shall be replaced or repaired at our sole discretion free of charge. The direct costs incurred for improvements and replacements are borne by us up to the amount of the purchase price. Otherwise the customer has to bear the costs.

If we are not willing or prepared to remedy the defect, especially if the notification is delayed after an adequate period for reasons we are not responsible for, or if the remedy of defect goes wrong for another reason, the customer has the right to cancel the order or to claim a respective price reduction.

## 9. Exclusion of liability

It is expressly agreed that the customer shall have not claim in respect of personal injury or of damage to property not the subject matter of the contract or of loss of profit according to § 284 BGB unless it is shown from the circumstances of the case that we or our legal representatives or executives have been guilty of intent or gross negligence. This disclaimer does not apply in cases of expressly assured properties and characteristics, requirements from the injury of the life, the body, the health or the injury of substantial contract obligations, if we have to represent the obligation injury or in cases governed by the (German) Product Liability Act involving liability for personal injury and material damage to privately used objects. In case of injury of substantial contract obligations our obligation for compensation is limited to the contract-typical, foreseeable damage, as far as we are guilty of intent or gross or if liability is caused by injury of the life, the body, the health or the assumption of a guarantee.

## 10. Exclusion of liability for zink plated fasteners

Fasteners made from steel and a property class of 10.9 and above and/or a surfaces hardness exceeding 320 HV the danger of hydrogen embrittlement after electroplating cannot be eliminated. The electroplating processes will be performed according to schedule ISO 4042. We are not liable for any damage wholly or partly caused by a defect in those products according to this Conditions of Sale.

## 11. Retention of Title

Title to the delivered product(s) is retained by us as security for all respective claim – whether conditional or time-limited – which arise as a result of the overall transaction.

The ordering party is entitled to use and dispose of the delivered product(s) within the framework of his normal business operation. He may not, however, transfer the product(s) as security, nor may he mortgage them, nor may he agree a similar retention of title with customers of his own. Seizures by third parties are to be notified to us immediately. The product(s) are thereafter to be taken on demand by us and at the expense of the customer to a specified location to protect against further seizure. Should the Customer be fully or partly in default with payment, we shall be entitled to demand return of the product(s) until full satisfaction is received, in this case our demand means withdraw from the contract. Retention of title also covers new products created by processing with our machinery. This processing is performed by the customer on our behalf, without any obligation arising on our part. As a precautionary measure, the customer herewith transfers title to the newly created products to us and further agrees to uphold such title on our behalf. The same shall apply when processing with other products which do not belong to us, if the products supplied by us do not constitute the major items, whereby our part-ownership of the new products shall correspond in proportion to the value of our retained title in relation to the value of the other products at the time of processing.

Receivable payable to the customer which arise from the resale of products to which title is retained are hereby assigned to us, regardless of whether such products have been processed or not, or whether they are resold to one or more purchasers. If sale is effected after processing of our products with other products, the assignment shall be effective for the part of the receivable corresponding to our co-title, so far as the products delivered by us do not constitute the major item. The customer is entitled to collect assigned receivables, provided that he fulfills his obligation to us in the agreed manner. He is otherwise obliged on demand to furnish to us the names and addresses of purchasers, the sums of the accounts receivable and copies of invoices. The customer expressly empowers us to notify his customers of the assignment at our discretion. Should the value of securities exceed our receivables by more than 10 %, then we shall be obliged on demand from the customer to release securities of our choice to the value of the sum exceeding the said 10 %.

## **12. Moulds, tools and devices**

Unless otherwise agreed upon, the customer bears the costs for making the moulds, tools and devices. Even if payment has been made in full they only become property of the customer, if this is agreed under separate cover. The act of transferring the moulds, tools and devices to the customer with transferring the property is, in this connection, fulfilled by our obligation to store them.

Irrespective of the customer's legal right to obtain the goods and irrespective of the life of the moulds, tools and devices, we are entitled to sole ownership of the moulds, tools and devices until the purchase of a minimum quantity agreed upon and/or until a certain period has elapsed. The moulds, tools and devices belonging to the customer will be marked by us as the third party property of the customer and insured by us at the request of the customer. Should the moulds, tools and devices be handed over and, with that, transfer of the associated know-how take place, we are entitled to adequate financial compensation.

## **13. Place of Fulfillment**

The place of fulfillment for all matters involving delivery and payment, claims from cheques and bills of exchange, and all other rights and commitments arising from the transaction, is Bielefeld, Germany.

## **14. Court of Jurisdiction; Governing Law**

All transactions are governed by German law under exclusion of the standard purchase Law of the United Nations Convention on Contracts dated 11, April 1980 for the International Sale of Goods (CISG).

The place for court of jurisdiction is, for both parties, Bielefeld, Germany. We shall also be entitled to sue the customer before the court having jurisdiction over the customer's place of business.

## **15. Computerized Records**

Computerized records, as defined in the (German) Data Protection Act, are made as a result of this transaction.