

Terms and Conditions of Sale of Böllhoff GmbH Austria 12/2018

Preamble

Böllhoff GmbH does business exclusively with entrepreneurs as defined in the Austrian Consumer Protection Act [Konsumentenschutzgesetz/KSchG]. Accordingly, the present Terms and Conditions of Sale apply exclusively to business-to-business transactions.

1. Applicability of the Terms and Conditions of Sale

Contracts between Böllhoff GmbH ("Böllhoff") and the contracting party ("Customer") shall exclusively be concluded on the basis of these Terms and Conditions of Sale. We do not accept any conflicting, deviating or supplementary terms and conditions of the Customer.

2. Offer and purchase order

Our "Offer" shall be considered an invitation to make an offer ("invitatio ad offerendum") and shall therefore be subject to change and non-binding, unless the acknowledgment of order states otherwise. Any documents provided or accessible to the Customer, such as illustrations, drawings, weights and measurements, shall be non-binding and only illustrative, unless they are expressly described as binding in writing.

The purchase orders sent to us shall be binding on the Customer. Contracts shall be concluded by sending an acknowledgment of order or issuing an invoice or by dispatching the goods or performance.

If we issue an acknowledgment of order the contents of the contract shall exclusively be as stated in the most recent version of our acknowledgment. All modifications of or amendments to the acknowledgment of order and other agreements or statements of the parties shall be made in writing in order to be effective, which shall also apply to an abolishment of the requirement of written form.

3. Prices

For prices that are not expressly described as fixed or binding prices in our offers or acknowledgments of orders we reserve the right to make reasonable price adjustments if, after conclusion of the contract and prior to delivery, the cost factors (materials, staff costs, energy and general charges, duties and transportation costs, etc.) change significantly. In the case of follow-up orders we shall not be bound by the prices of previous contracts.

Prices shall be ex works, net of any packaging costs, plus statutory value added tax. Our list prices are based on delivery of full original packages, notwithstanding any surcharges that may apply. We reserve the right to round up or down to the next packaging unit.

Price list products will be charged at the list prices applicable at the time of delivery.

For purchase orders below an order value of EUR 50 we shall, in view of the necessary handling costs, be entitled to charge a service charge of EUR 25 irrespective of any rebates or discounts agreed.

We reserve the right to make excess or short deliveries of up to 10% of the total order quantity, in particular in the case of special parts.

4. Terms of payment

Unless otherwise agreed payments shall be made within 30 days of the invoice date without any deductions; any right of set-off or to retain payment shall be excluded. We shall accept discountable bills of exchange on account of payment only upon express agreement. The validity of credit notes for bills of exchange or cheques shall always be subject to receipt and without prejudice to an earlier due date of the purchase price in the case of default on the part of the Customer. The value date shall be the day on which we are able to dispose of the equivalent. In the case of non-observance of the terms of payment or circumstances which become known to us after conclusion of the relevant contract and which are likely to reduce the Customer's creditworthiness (e.g. knowledge of pending orders for payment proceedings or institution of such proceedings, opening of insolvency proceedings against the Customer, if the prerequisites for opening of proceedings under insolvency law are fulfilled or if negative credit information becomes known) all our accounts receivable shall immediately become due irrespective of the term of accepted bills of exchange. We shall notify the Customer thereof in writing. Moreover, we shall be entitled to effect outstanding deliveries only against advance payment or provision of security and to rescind the contract after a reasonable grace period or to claim damages on the ground of non-performance.

5. Delivery period

Delivery periods and dates promised by us shall always be deemed estimates and shall be non-binding, even if that is not expressly stated. Periods shall start to run only after the agreed prerequisites for delivery have been fulfilled, if any (e.g. provision of documents, approval of specimens, agreed advance payments) and after all technical issues relating to the subject matter of the contract have been clarified.

For us to comply with our delivery obligations the Customer is required to duly fulfil his obligations in time.

In the case of a call purchase the Customer must take delivery of the goods within one year of the first delivery date confirmed by us, unless agreed otherwise.

In the case of delay in delivery on our part the Customer must grant us a reasonable grace period of at least 14 days. Upon expiration of such grace period he shall be entitled to rescind the contract to the extent that the goods have not been advised as ready for dispatch by the end of that period. Böllhoff is entitled to effect partial deliveries and early deliveries and to issue partial invoices on the same.

Claims for damages vis-à-vis us on the ground of non-performance or late performance shall be excluded, unless they are based on wilful intent or gross negligence.

6. Packaging and dispatch

We shall choose the packaging to the best of our knowledge and belief unless specifically agreed in writing. We shall accept returns of used packaging at the Customer's cost.

Goods shall be dispatched ex works for the account and risk of the Customer. This shall also apply to delivery freight paid.

In the absence of special instructions we shall choose transport routes and means of transport to the best of our knowledge and belief without any liability for the cheapest and fastest mode of shipping. If, after notification that goods are ready for dispatch, goods are not called as agreed or if transport is impossible permanently or temporarily with no fault on our part, the purchase price shall become due for payment nevertheless. In that case we are entitled to store the goods at the cost and risk of the Customer at our own discretion.

7. Impossibility of delivery

Business interruptions of all kinds, events of force majeure, including statutory driving bans due to smog or ozone alerts, strikes, lockouts, etc. affecting us or our suppliers and all other causes or events preventing supply, production or shipping shall lead to an extension of periods or postponement of dates for as long as the situation prevails. They shall be no "events of default" and shall not trigger the legal consequences related to such events.

8. Warranty and notification of defects

Our oral or written advice on application technology, including with respect to proprietary rights of third parties, if any, shall be non-binding and shall not release the Customer from his duty to check our products for their suitability for the intended purposes and processes.

If, however, liability on our part should arise nevertheless, we shall provide compensation only as in the case of defects in quality.

Notifications of defects, in particular with respect to quality, weight or measurements, shall be subject to Section 377 and Section 378 of the Austrian Business Code [Unternehmensgesetzbuch/UGB]. Notwithstanding the foregoing, notifications of defects must be made in writing without delay and not later than within one week of arrival of the goods at the place of destination.

Any and all claims of the Customer on the ground of default may only be actively asserted by the Customer vis-à-vis Böllhoff. The due date of accounts receivable by Böllhoff shall not be postponed thereby and the Customer shall have no right to withhold, reduce or set off payments. The Customer shall in any case bear the burden to prove existence of a defect.

In the case of a defect in the goods for which we are responsible we may choose either to repair the defect or to effect substitute delivery. We shall only bear the expenses incurred to remedy the defect, in particular costs of transport, travelling, labour and materials, up to the amount of the purchase price.

All claims of the Customer's shall expire if he is in delay in his own performance obligations.

9. Exclusions of liability

Claims for damages of any kind, in particular on the grounds of consequential damage or indirect damage, such as business interruption or third-party damage, shall be excluded, unless they were caused by wilful intent or gross negligence or absence of expressly promised properties. This shall not apply to personal injuries.

In the case of galvanised fasteners made of steel of property class 10.9 and higher and a surface hardness of more than 320 HV the risk of hydrogen-induced brittle fracture cannot be excluded according to the state of the art. Use of such fasteners shall thus be at the Customer's risk. We assume no liability for any damage resulting from brittle fractures, including consequential damage, and the Customer shall prove that any damage is definitely not due to use of such materials.

If they are not precluded at all claims for damages shall become time-barred 12 months after the damage and the party who caused the damage became known and in any case three (3) years after delivery or provision of the service.

10. Retention of title

We shall retain title to the delivered goods until full payment. Goods the title to which has been retained may only be resold if we have been notified thereof timely in advance, including the (business) name and exact business address of the purchaser, if we agree to the resale and if the purchaser has been informed about the fact that we retain title to such goods. Any claims of the Customer arising from resale of the goods the title to which has been retained shall be assigned to us already at this point, irrespective of whether such goods are resold after they have been processed or not and whether they are resold to one or more purchasers. We are entitled to notify the third-party debtor of the assignment at any time.

In the case of late payment we are also entitled to seize, disassemble or dismantle the goods the title to which has been retained in whole or in part and to take them into our custody, even without any judicial or official order, and the Customer shall not be entitled to any claims in that connection. In particular, the Customer is obliged to grant access to his premises as necessary for that purpose and shall not impede returning of the goods.

When placing the order the Customer in advance waives his right to assert claims on account of trespass or to claim cease and desist orders. Costs incurred in connection with returning the goods shall be reimbursed by the Customer. Our other rights (cf. e.g. Clause 4) shall remain unaffected thereby.

We shall immediately be advised of any attachments of the goods by third parties. The goods shall then be taken to a place designated by us or stored at our request to protect them against additional attachments.

Retention of title shall also extend to new products originating from processing. Such processing shall be carried out by the Customer for us without any obligations whatsoever arising for us. Upon processing the Customer shall transfer to us title to the developing new products and it is at the same time agreed that he shall keep them safe for us. The foregoing shall also apply if the Customer processes or commingles them with other goods that do not belong to us, and, in the case that the goods delivered by us do not constitute the principal part, subject to the proviso that we are entitled to co-ownership of the new products in the proportion of the value of our goods the title to which has been retained to the value of the other goods at the time of processing.

If the sale occurs after our goods have been processed with other goods, the assignment shall apply to the portion of the claim corresponding to our co-ownership if the goods delivered by us do not constitute the principal part.

11. Place of performance

Unless otherwise agreed the place of performance shall be our head office in Linz.

12. Choice of law and place of jurisdiction

Austrian law shall apply exclusively, and its conflict of laws rules and UN Sales Law (BGBl [Federal Law Gazette] I No. 96/1988) shall be excluded.

The place of jurisdiction for all legal disputes arising between Böllhoff and the Customer, including over conclusion of a contract and applicability of these terms and conditions, shall be the court having jurisdiction over the subject matter in Linz, Upper Austria.

We, but not the Customer, are, however, also entitled to resort to the courts having jurisdiction over the Customer's registered office.

13. Severability clause

If any provision of these Terms and Conditions of Sale is unenforceable or ineffective or becomes unenforceable or ineffective due to statutory provisions, the remaining provisions of these Terms and Conditions shall remain effective without change. The unenforceable or ineffective provision shall be replaced by an enforceable or effective provision the effect of which comes as close as possible to the financial objective of the unenforceable or ineffective provision.

14. Privacy policy

The agreement of a business relation is connected with data processing by us. You will find the information required by law in our privacy policy. This will be made available to you when personal data is collected, and you can also access it electronically at any time at <https://www.boellhoff.com/at-en/privacy-policy>.