

General conditions for the sale and delivery of new ex-factory motor vehicles, trailers, assemblies and motor-vehicles bodies.

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I. General

1. The seller is BINZ GmbH & Co., D73547 Lorch/Württ. or Binz Ambulance und Umwelttechnik GmbH, D-98693 Ilmenau. The present terms of sale and delivery shall apply to companies which upon conclusion of the sales agreement are engaged in commercial or independent professional activities as well as to legal entities under public law or public special assets.
2. Conflicting general business conditions, in particular the purchasing party's conditions of purchase, shall have no validity or effect, even if the seller does not expressly protest them.
3. No additions, modifications or supplementary agreements are effective until confirmed in writing by the seller. A product characteristic is only deemed to be guaranteed if it is specified in writing.
4. All cost estimates, drawings and other documents remain the property and copyright of the seller.
5. All details of operating performance, running costs, speed, weight and dimensions stated in the descriptions, documents and illustrations are to be regarded as approximate and do not constitute a guarantee of a particular characteristic.

II. Quotations and conclusion of contract

1. The seller's quotations are not binding. A contract is only concluded when a written confirmation of order is issued by the seller.
2. The delivery specification is subject to the seller's written confirmation of order and any written supplementary agreements or modifications, in each case in conjunction with these conditions.
3. The seller reserves the right to modify designs, materials and technical specifications insofar as this does not restrict the utility of the delivery-item.

III. Price and payment

1. Prices are quoted ex works. Value added tax is charged additionally at the rate applicable at the time of delivery. Additional costs for packaging, freight, insurance, duty and other charges must be borne by the purchaser.
2. Payment of the purchase price is due immediately in cash. No discounts or other reductions will be granted. Other methods of payment will only be accepted in fulfillment by special agreement; bills of exchange will be accepted subject to their discountability.
3. If part-deliveries are made, the seller is entitled to issue part-invoices.
4. In the event of late payment, the seller reserves the right from this point in time on to claim interest on the arrears at a rate equivalent to the rate a bank would charge the seller for overdrafts on current accounts, but at least a minimum rate that is 8 percentage points above the relevant base lending rate set by the European Central Bank.
5. In the event of failure event of failure to comply with the conditions or if the seller becomes aware, after conclusion of the contract, of facts which significantly reduce the credit standing of the purchaser from a banking point of view, following issue of a reminder stating an extension period all accounts receivable become due immediately, irrespective of the term of any bills of exchange in hand. In this event, the seller is entitled to complete any outstanding deliveries and services only against advance payment or provision of security, or to withdraw from the agreement after expiry of an appropriate extension period, without prejudice to his entitlements to reimbursement of costs. In the event of the seller's withdrawal, the purchaser, insofar as he or a third party was in possession of the delivered item after its delivery, shall in addition to compensation for use also be liable for any reduction in the value of the delivered item, even when not responsible for this loss of value. The seller is entitled to demand either compensation for actual use and loss of value, or alternatively a lump-sum payment of 3% of the purchase price per month, insofar as the purchaser is unable to prove that the loss is lower
6. The withholding of payments or their offsetting against claims by the purchaser which have not yet been finally determined or are contested by the seller is not permissible.
7. The purchaser shall agree to the offsetting by the seller of the purchaser's receivables and liabilities against the seller. All conditions shall be assessed on the basis of the date of order, and not according to when payment is due. If payments are due on different dates, they are settled in order of value. Settlement of accounts includes the account balance if mutual accounts are held.
8. If in the course of ongoing business obligations changes occur in wage, material and energy costs or in chargeable rates of value-added tax (VAT), the seller has the right to carry out a reasonable adjustment of prices taking account the above factors. In the case of other orders, the seller reserves the right to adjust prices in the event of changes in wage, material and energy costs and VAT, if the contracting date and the delivery date are more than 4 months apart. If delivery is only possible after this 4-month period, for reasons for which the purchasing party is responsible, the seller shall have the same right to increase prices.

IV. Delivery time

1. Compliance with delivery dates depends on whether the order has been fully clarified, all necessary permits and authorizations granted and all documents, payments, guarantees, transport containers and means of transport for the supply of which the purchasing party is responsible received by the seller in time.
2. The delivery deadline is regarded as having been met if the item to be delivered has left the manufacturer's plant or the purchaser has been notified that it is ready for delivery by the agreed date.
3. In the event of force majeure such as insurrection, strike, lock-out or other unforeseen circumstances beyond the control of the seller, such as stoppages at the manufacturing plant or problems for which a supplier is responsible, the delivery period shall be extended by an appropriate amount; this shall also apply if the problems occurred during an existing delay.
4. Six weeks after a delivery deadline has been exceeded, the purchaser may call in writing upon the seller to deliver the item to be supplied within a reasonable period. If this extension expires to no avail, the seller is deemed to have defaulted. The seller has not defaulted as long as the purchaser has not satisfied his own contractual obligations.
5. If the seller fails to deliver in time and if the purchaser suffers a loss as a result, the purchaser shall have the right to claim flat-rate compensation for delayed performance. Compensation for every full week of delayed performance is 0.5 percent, however

the total must not exceed 5 % of that part of the overall delivery which as a result of the delay cannot be used in time or in accordance with the contract.

6. If the purchaser delays delivery by failing to provide the necessary assistance, e.g. supplying components for installation, conversion and addition, if he fails to take receipt of the delivered item following the transfer of risk or does not meet his payment commitments, the seller may withdraw from the agreement following the issue of a reminder with extension period, or claim damages for non-fulfillment of contract. In the latter case, the seller is entitled to demand either compensation for the actual loss suffered or a lump sum equivalent to 15% of the purchase price, insofar as the purchaser is unable to prove that the loss is lower. Alternatively, the seller is entitled to dispose of the delivered item by other means after an extension period has expired and to deliver the item to be supplied to the purchaser after an appropriate extension to the delivery period.
7. For the above cases of unforeseen events, provided that such events significantly change the economic value or the content of the performance or have substantial effects on the business of the seller and in the event of performance subsequently proving impossible, the contract shall be amended in a reasonable manner. If such an amendment is not economically justifiable, the seller reserves the right to withdraw from the contract either in full or in part. If the seller chooses to withdraw from the contract the purchaser shall have no right to claim damages.

V. Transfer of risk and handing-over of the item to be delivered

1. The risk passes to the purchaser at when the item to be delivered is handed over to the carrier, freight company or collector or, insofar as transportation has been undertaken by the seller, at the start of loading work, but at the latest upon leaving the manufacturer's plant.
2. If dispatch or collection is delayed due to circumstances beyond the seller's control, the risk passes to the purchaser from the day on which notification of readiness for dispatch was given. Starting from the day on which a subsequent reminder is issued, the purchaser shall pay 0,5% of the invoice total per month for storage by a third party or by the seller.
3. The purchaser shall take receipt of delivered goods, even if these reveal minor defects, without prejudice to his rights as specified in Section VII.
4. Part-deliveries are permitted.

VI. Retention of title

1. The seller retains the title to all delivered items until all claims against the purchaser resulting from business transactions with him have been settled in full. If a running account is kept, the entire goods on which title is retained shall serve as security for the balance due. If the value of the security for the seller and its group of companies exceeds the amount due from the purchaser by more than 25%, the seller is obliged to release security of its own choice at the request of the purchaser.
2. The purchaser may not pledge the delivered item or surrender it as security. If it is pledged, seized or disposed of in any other way by or to third parties, he must inform the seller without delay by registered letter and bear the costs of any measures to rectify this situation, in particular of intervention proceedings, if these costs cannot be recovered from the opponent.
3. The purchaser's claims resulting from the resale or disposal of the item on which title is retained are already surrendered to the seller, regardless of whether the item on which title is retained is resold or passed on with or without further processing, to one or more than one party. The surrendered claim acts as security on the value of the item on which title is retained when it has been resold or further disposed of.
4. When the delivered item is combined with another article belonging to the purchaser to produce a new, integral article, the seller is co-proprietor of the new object in proportion to the value of the delivered item to the invoice value of the other article. If the purchaser becomes sole proprietor of the new article by law, the purchaser and seller agree that the purchaser shall transfer co-proprietorship of the new article to reflect the value of the incorporated delivered item in proportion to the invoice value of the other article.
5. If the purchaser infringes this agreement, in particular by defaulting on payment, or if insolvency or bankruptcy proceedings are opened in respect of the purchaser's assets, the seller is entitled take back the goods and the purchaser is obliged to hand them over, excluding all rights of retention. All costs incurred in this recovery process are borne by the purchaser. The seller is entitled to sell the recovered item and its accessories to its best advantage, notwithstanding the purchaser's commitment to pay. Enforcement of titular rights and disposal of the delivered item by the seller do not constitute withdrawal from the agreement, insofar as installment-purchase law is not applicable, unless provided otherwise by law.

VII. Liability for defective deliveries

1. The purchaser shall subject the delivered item to inspection without delay. The seller shall be notified about faults and defects – including absence of promised qualities – in writing immediately after their discovery. Notification of obvious deficiencies must be made in writing within 7 days after receipt of the delivery. If the purchaser fails to inform the seller, the delivered items shall be considered approved and accepted. The requirements for inspection and to give notice of defects shall also apply as appropriate if an item or a quantity of an item other than the specified item or quantity was delivered, unless the delivered item deviates so significantly from the original order that the purchaser's approval must be considered impossible.
2. Without prejudice to the purchaser's rights in accordance with sections VIII und IX, in the event of defective delivery the purchaser can only demand – at the seller's option - repair of the delivered item or replacement of faulty parts.
3. If the seller expressly accepts a warranty claim, he shall bear the costs of the cheapest form of carriage and appropriate costs for assembly work. Assembly costs will be reimbursed provided that the work is carried out by the seller or by a workshop authorized by the seller. All further claims by the purchaser, except for those listed in Section VII, are excluded. Further claims of the purchaser, apart from those specified in sections VIII and IX, are excluded.
4. To enable the seller to perform all improvements and deliveries of spare parts that are deemed necessary on the basis of its discretion, the purchaser shall by agreement with the seller provide the necessary time and opportunity as soon as possible. Only if operating safety is at risk, in which case the seller is to be notified immediately, or if the seller defaults on rectifying the defect, is the purchaser entitled to rectify the defect himself or to have it rectified by a third party and to demand suitable reimbursement of costs from the seller.
5. No warranty can be accepted for damage resulting from natural wear and tear. Nor is any guarantee issued in respect of damage due to improper handling, such as incorrect use, failure to observe the servicing and maintenance instructions, improper upkeep, excessive loads or the use of unsuitable operating substances and material.

VIII. Seller's rights

1. The purchaser may withdraw from the agreement if the seller is definitively unable to supply the full performance before transfer of risk. The same applies in the event of the seller's insolvency.
2. Furthermore, the purchaser has the right to withdraw from the contract if the purchasing party has granted the seller without success a reasonable period in which to perform the service or make a replacement delivery, and when doing so stated explicitly that he will in such circumstances refuse acceptance of the service or replacement delivery.
3. If delivery becomes impossible when acceptance has been delayed by the purchaser or for reasons for which he is responsible, he remains liable for the fulfillment of his own obligations.
4. Furthermore, the purchaser has the right to either terminate the contract or claim a reduced purchase price if the seller fails to eliminate or remedy the defect within a reasonable period fixed by the purchaser in accordance with section 7.

IX. Liability for accessory obligations and as manufacturer

1. If not specified otherwise below, other and further claims of the purchaser against the seller are excluded. This applies in particular to claims for damages due to breach of contract and unlawful acts. The seller shall not be held liable for damage that has not occurred directly on the delivered items themselves. In particular the seller shall not be held responsible for the purchaser's loss of profit or any other pecuniary loss.
2. The above limitations of liability shall not apply in the event of criminal intent, gross negligence of the seller's legal agents or executives and in the event of negligent breach of essential contract obligations. In such cases the seller will only accept liability for reasonably foreseeable damage typically covered by contract.
3. Furthermore, the limitations of liability shall not apply in cases when liability is accepted for personal injury or property damage of privately used items in accordance with product liability legislation, nor in the event of violation to life, body or health and the lack of promised qualities, if and insofar as the guarantee of a quality was meant to protect the purchaser from damage that did not occur directly at the delivered item.
4. Insofar as the seller's liability is excluded either wholly or in part, this shall also apply to the personal liabilities of employees, workers, staff, legal agents and subcontractors.
5. The legal regulations with regard to the burden of proof shall remain unaffected.

X. Legal venue and applicable law

1. The sole legal venue for all present and future claims resulting from business associations, including claims resulting from bills of exchange and cheques, shall be Schwabisch Gmünd (BINZ GmbH & Co) or Ilmenau (BINZ Ambulance & Umwelttechnik GmbH).
2. The contractual relationship shall be subject exclusively to the law of the Federal Republic of Germany. Application of the UN agreement of 11.04.1980 on contracts regulating the sale of goods (CISG "Vienna Purchasing Law") is excluded.

XI. Assignment of the purchaser's rights and obligations

The assignment of rights and obligations resulting from the agreement are only effective with the seller's prior written approval.

XII. Invalidity of a clause

If one or more clauses in these terms should be or become invalid, the validity of the remaining clauses remains unaffected. In case of dispute, the German text of these conditions is binding.