

General Terms and Conditions for Brell Automatisierungstechnik GmbH

I. General

These general terms and conditions supplement the agreements we have reached with our customers. Our goal has been to achieve a balanced relationship that meets the interests of both parties. Please understand that we are not able to separately negotiate each contract right down to the last detail. Certain principles apply equally and in the same manner for all contracts. This is the only rational way to work that also serves the best interests of the customer.

II. Defense Clause

Our General Terms and Conditions apply exclusively. We cannot recognize any opposing, deviating or additional customer terms unless we have expressly consented to their validity.

III. Offer

1. Orders directed to us are a binding offer. Our offers are subject to change. The contract is usually concluded only by sending an order confirmation.
2. We reserve the right to store personal information in order to process orders.
3. The customer is responsible for obtaining governmental or other permits required to fulfill the order.
4. Subsequent amendments to the contract require written agreement.

IV. Scope and Timing

1. The order confirmation or the order itself hold precedent for defining the scope.
2. Delivery dates are only binding if they have been agreed to in writing, or we have confirmed them in writing.
3. Delivery times begin only after receipt of the documents, permits and other information that the customer is responsible for supplying, and which are necessary for properly executing contracts; nor will payment be made in advance of receipt of the invoice amount. The delivery deadline shall be considered as having been met if the item to be delivered has left our disposal area by the time the delivery deadline has expired, or as soon as we have indicated that the delivery item is ready for pick up.
4. If we are more than four weeks late with our service/delivery, then the customer is entitled to give us a two-week extension in writing. The customer justified in rescinding the contract only after this additional deadline has passed. The extension must be an additional six weeks for customized manufacturing and prototypes.
5. We must exclude any further claims as long as there was no deliberate or grossly negligent performance on our part. The customer is not permitted to rescind the contract if we are able to demonstrate that we did not cause the delay. The same shall also apply if we are hindered in meeting our deadline due to force majeure, or other things beyond our control, such as a strike, lockout or official orders, regulations, etc. Contract fulfillment shall ensue as soon as the obstacle is removed.
6. We reserve the right to use our own discretion to determine the type of packaging, type of shipping and the shipping route.
7. If order fulfillment should be prevented due to circumstances for which the customer is responsible, we reserve the right, after having warned the customer once, to cancel the contract and to demand payment for damages instead of the original service offered.
8. In the event of default of acceptance, we have the right to demand repayment for all of the costs involved that have now been wasted in preparatory labor, delivery, warehousing, etc.
9. Transfer of risk in terms of loss of or damage to machinery or product to be supplied occurs at time of delivery. For the agreed-upon transport, this risk ensues upon dispatch, and for delayed acceptance, this risk ensues beginning with the agreed-upon delivery date.

V. Reservation of Performance, Damages

1. In the event of bankruptcy, late payments, insolvency and settlement petitions, and when we become aware of levy of executions against the customer, we reserve the right to demand to either cancel the contract and demand damages instead of products and services, or to do business with the customer only if they prepay or pay cash on delivery. If the customer still does not pay the agreed-upon prepayment despite reminders, then we have the right to cancel the contract and to claim payment for damages instead of performance, products and services.
2. In the event we cancel the contract, we have the right to demand a flat rate of 20% of the order total as payment for damages. Both we and the customer are free to prove that the concrete damages should be assessed either higher or lower than the flat-rate payment for damages.

VI. Prices and Payment

1. For commercial and industrial customers, our prices are net, to which the legal VAT is added. We state our final prices for all other customers.
2. Should the performance or execution of the service be delayed by more than four months and we are not to blame, we can then demand the then current price.
3. Unless otherwise agreed, our services will be payable as follows:
50% deposit when order is placed,
45% upon deployment and prior to delivery
5% upon acceptance.
4. Our customer is in default without another warning being required 14 days after receipt of invoice and after expiration of the payment deadline stated on the invoice. For commercial customers, the statutory default interest is 8% above the base rate set by the European Central Bank.

VII. Liability for Defects in Performance

1. Immediately upon receipt, the delivered equipment or products must be inspected for defects and completeness. In commercial transactions, complaints must be promptly brought to our attention in writing. Otherwise, the equipment or product will be deemed to have been accepted without objection.
2. Should our goods and services be defective, then we will either repair or replace the product. At this point, the customer is not entitled to further claims. If, however, a second attempt at repairing or replacing fails, and proof can be demonstrated of an ongoing defect, then the customer has the right to reduce the purchase price by an appropriate amount or to cancel the order. We cannot grant any further claims.

VIII. Obligation to Meet Claims, Deadlines

1. The deadline for liability to meet claims in terms of eliminating defects from equipment or products that we delivered is 12 months, starting with the date that the equipment or products were transferred to the buyer, as long as the customer is not a consumer. Otherwise, the statutory provisions apply.
2. For working parts that incur wear and tear, the deadline for liability to meet claims is reduced to the usual service life of the wear part. If the customer prematurely replaces a working part, he must ensure that doing this does not also cause failure. We will not be responsible for this type of failure.
3. Generally, claims of rectification of defects require that our instructions for usage be followed first. If this is violated, then this could result in termination of liability.
4. The aforementioned cost limit applies to the normal use of the machinery or goods supplied by us, that is, a weekly operation of 5 days for a total of 50 hours. If more than this is demanded of the equipment or product, in particular in the event of multi-shift work, then the liability period shall be reduced in proportion to the multi-shift operation.
5. We shall make every effort to clarify these types of specifics through separate agreements.

IX. Retention of Title, Copyright

1. The product to be delivered shall remain our property until it is paid for in full. Therefore, it may not be resold or used as collateral until it is paid in full. If, however, the product is resold despite this proscription, then we are entitled to compensation claims against the third party.
2. The customer must notify us immediately in the event of seizure of goods under retention of title.
3. We retain the copyright to drawings, illustrations and similar.

X. Final Determination

Should one of the above provisions be ineffective, then the statutory provision shall apply instead. The remaining provisions of the General Terms and Conditions, however, shall remain unaffected by this.

XI. Jurisdiction

Should a legal dispute become necessary either from or through the contractual relationship, then, to the extent that the jurisdiction clause permits it, this will be brought before the District Court or the District Court of Darmstadt, Bensheim.

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