

## **General Terms and Conditions of Balda AG**

### **I. Validity**

These General Terms and Conditions apply to all of our contracts, deliveries and other performance items including consulting, provision of information, etc. It shall not be necessary to deny the validity of the General Terms and Conditions of the buyer. On the contrary—the following General Terms and Conditions shall be considered established and accepted upon receipt of the purchased material.

### **II. Tenders and transactions**

The seller's tenders are always nonbinding. Potential supply is reserved. Legal business agreements (orders and supply contracts pp.) are not valid for the seller until confirmed in writing by the seller. With order of goods, the buyer makes a binding declaration that he wishes to acquire the goods. The seller has the right to accept the proffered contract inherent the order within two weeks of receipt by him. Such acceptance can be declared either in writing or by delivering the goods to the buyer.

If the buyer orders the goods electronically, the seller will confirm receipt of the order without delay. This confirmation of receipt does not yet constitute a binding acceptance of the order. If the buyer has ordered the goods electronically, the contract text will be stored by the seller and sent to the buyer on demand together with these General Terms and Conditions by email. Only legal representatives of the seller have the right to engage in legal business transactions on behalf of the seller. Transactions in the name of the seller carried out in the form of these declarations provided to others are not valid until confirmed in writing by the seller.

### **III. Prices**

The prices are to be understood, unless otherwise defined in the tender, as covering supply ex works without packaging, transport or insurance.

### **IV. Payments and balances**

1. The conditions of payment listed in our order confirmations are binding on the buyer. If nothing was agreed in an individual case, payments are due net upon receipt of the goods with no discounts.
2. We accept discountable cheques and bills of exchange as fulfilment when expressly agreed. Handover of the cheque or bill of exchange must follow immediately upon receipt of the bill, whereby no discount is allowed and discount charges must be paid without delay.
3. All of our accounts receivable are due immediately, regardless of other agreements, if the conditions of payment are not met or circumstances become known to us that are of such a nature as to reduce the creditworthiness of the buyer. We then have the right at our discretion, without affecting any other legal rights, to make any outstanding deliveries against prepayment only, to demand securities at our discretion, to withdraw from the contract after a suitable notice period or to demand damages for non-fulfilment.
4. We have the right to balance our accounts receivable against those of the buyer, for whatever legal reason, even if the due dates of the accounts being balanced off against an another are different. Withholding of payments or balancing of accounts with counterclaims by the buyer that are contested by us are not permissible.

### **V. Delivery periods and deadlines**

1. Delivery periods and deadlines are to be considered approximate unless we have expressly issued a written confirmation as binding. Delivery periods begin with arrival of the order confirmation. Agreed delivery periods are extended by the amount of time during which the buyer has not met his obligations to us, in particular payment obligations from this or another contract, plus a suitable startup time.
  2. *Force majeure* events (that is strikes, lockouts, deficiencies of raw materials and fuels, business operation or transport disturbances and other circumstances beyond our control) give us the right—even when in arrears—to delay delivery by the duration of the hindrance or a suitable startup time or to withdraw wholly or in part from the contract for the as yet unfulfilled part.
  3. All rights of withdrawal from a contract refer only to parts of the contract not fulfilled as yet.
  4. Further claims of the buyer, in particular damage claims for delayed delivery or non-fulfilment, are, to the extent they are legal, not permissible. This does not apply to damages for physical injury. Disturbances of traffic and/or business operations, strikes, lockouts, transport problems, lack of raw materials and other similar circumstances give the seller the right to withdraw from the contract, either wholly or in part. Such damages claims by the buyer are, to the extent they are legal, not permissible. This exclusion of liability does not apply to damages in cases of physical injury.
- Further, the exclusion of liability does not apply if the seller is responsible for the contract withdrawal.

### **VI. Reservation of title and procedural regulations**

1. Until all accounts receivable from the business relationship are satisfied, all goods (reserved goods) remain our property, even after they have been sold by the ordering party (extended reservation of title).
2. Any working and processing of the reserved goods is carried out for us as the manufacturer as per § 9 950 BGB (German Civil Code) without obligating us. The processed goods are considered reserved goods as defined in these conditions. If the reserved goods are processed or inseparably combined with other objects that are not our property, we acquire proprietorship to the new product in the same proportion as that of the calculated value of the reserved goods to the calculated value of the other goods used at the time of processing or combination. This also applies if the reserved goods are built into another product which is considered the main contractual product.
3. Further, the buyer may sell the reserved goods in normal business transactions only subject to his normal terms and conditions.
4. The buyer's accounts receivable from sale of the reserved goods are hereby ceded to us. In case of integration or processing of our goods, the proportional value of our goods as per no. 2 above in the total account receivable from sale of the product by the buyer is considered ceded to us at its origin.
5. The buyer has the right to call in accounts receivable from further sale up to the point of our cancellation, which is permissible at any time. He does not have the right to cede these accounts receivable to third parties. On our demand he is obligated to give notice of the cession to us to his buyers and to provide us with the information and documentation necessary to enforce our rights.
6. The right of the buyer to possess the reserved goods is nil and void if he does not honour his obligations from this or another contract. We then have the right, without additional notice or a declaration of cancellation, to enter the business operations site of the buyer and take possession of the reserved goods and to turn it to account by means of open sale or auction, regardless of any obligations of payment or otherwise which the buyer may have to us.
7. Tools and equipment made by us for the purpose of completing an order remain our property, regardless of whether and in what form they are paid for. We are not obligated to keep tools and equipment in storage after delivery.

### **VII. Shipment and transfer of risk**

1. Shipping is carried out at the expense and risk of the customer.
2. The risk of all transactions, including that of confiscation of the material, is transferred to the buyer with handover of the material to his shipper or freight carrier, at the latest upon leaving the warehouse or supplying factory.
3. We have the right to make partial deliveries and to deliver slightly more or less than stipulated in the contract as per normal branch usage.

### **VIII. Warranty and complaints**

The buyer only has a warranty claim due to defects in the goods if the buyer has given notice of such defects at the latest within 14 days of receipt of the goods to the seller in writing, listing the putative defects in detail. The buyer's obligation to inspect the goods extends to the entire delivery volume. Notice of the defects must reach the seller in due time by registered mail. The measure of deadline maintenance is receipt of the notice of defects. If the notice of defects is justified, the seller may, at his discretion, provide replacements at no cost or otherwise remedy the defects.

If the seller recognizes the notice of defects as legitimate, but has not exercised his discretion in this matter within 14 days, the buyer may demand a change of contract. In case of notice of defects, the buyer must at the seller's behest ship the goods or the requested portion of the goods back to the seller at his own expense. He does not have the right in case of complaints to return all of the goods against the will of the seller if only shipment of defective parts is demanded.

If subsequent fulfilment does not take place, the buyer may, in principle, at his discretion, demand either a reduction of payment (reduction) or cancellation (withdrawal) of the contract. However, the buyer has no such right of withdrawal in cases of minor contract infringements, in particular minor goods defects. If the buyer declares his withdrawal from the contract due to a legal or material infringement following failure of subsequent fulfilment, he then cannot claim damages due to the defect. If the buyer chooses to demand damages following failure of subsequent fulfilment, the goods remain with the customer if this can be deemed acceptable to him. The redress of damages is limited to the difference between the purchase price and the value of the defective product. This does not apply if the seller has brought about the contract infringement by malice aforethought. The warranty period for business operations is one year beginning with delivery of the goods. The warranty period limitation does not apply in the event of injury to life, body or health, intent or gross negligence of Balda or its legal representatives.

Only the manufacturer's product description shall be considered the agreed warranted nature of the goods. Public announcements, descriptions or advertisements by the manufacturer do not constitute the contractually warranted nature of the goods.

If the buyer is provided with incorrect or insufficient installation instructions, the seller is only obligated to provide installation instructions that are correct and sufficient and only if the incorrectness or insufficiency of the installation instructions are such that they would prevent proper installation. The seller does not provide guarantees to the buyer in the legal sense of the term. Manufacturer's guarantees are not affected by this.

### **IX. Exclusions from warranty**

1. The warranty does not extend to deficiencies due to selection of unsuitable material if the buyer has prescribed use of a specific material despite our prior warning. We undertake no warranty for parts added by the buyer.
2. The warranty does not cover natural wear and damages due to improper handling. In particular, we are not liable for changes in the condition of the goods due to improper storage or climatic or other effects.

### **X. General limitations of liability**

1. Claims not expressly warranted in these conditions, in particular damage claims due to inability, delay, infringement of secondary contractual obligations, indebtedness at conclusion of contract, impermissible actions, also to the extent such claims are covered by warranty rights of the buyer, are excluded from liability to the extent this is legal. This applies in particular to claims for remedy of damages to objects not included in our scope of delivery.

2. In case of obligation infringements entailing minor negligence, the liability of the seller is limited to immediate averaged damages that are foreseeable and typical for contracts. This also applies to obligation infringements entailing minor negligence by the legal representatives of the seller or the seller's agents.

The seller is not liable for infringements of inessential contractual obligations entailing minor negligence vis-à-vis business operations (companies). The above limitations of liability do not apply to buyer's claims resulting from product liability. Further, the limitations of liability do not apply in cases of physical injury or damage to health imputable to the seller or in case of the death of the buyer. The statute of limitations for damages claims by the buyer due to goods deficiencies is one year after delivery. This does not apply if malice of forethought can be imputed to the seller.

Further, a regulation concerning delay of payment should be included as follows:

If a payment deadline is not met, the buyer must pay to the seller interest on arrears beginning with the due date for the account receivable at the rate of 8% above the base lending rate according to § 1 of the Discount Rate Transfer Law of 09/06/1998. In case of arrears of payment, each month started counts as a full month. The right to enforcement of further damages due to arrears is reserved. Arrears of payment apply immediately when a cheque or bill of exchange is not honoured or if bankruptcy proceedings are pending on the buyer's assets, either in court or out of court. In such cases, all outstanding billing sums are due, regardless of whether bills of the exchange given in payment are in the hands of the seller or have been passed on.

It is not permissible for the buyer to make payment dependent on the fact that a bill of exchange has been returned to him. In addition, the seller also has the right in the above cases to demand prepayment or securities for goods already delivered, either wholly or in part, even if no bill has been issued yet. If arrears of payment or equivalent cases persist for longer than 14 days, all agreed rebates as well as sales tax and freight refunds no longer apply.

The buyer is in arrears of payment at the latest 30 days after due date and receipt of a bill or equivalent demand for payment.

### **XI. Legal venue**

1. The legal venue is the District Court at Bad Oeynhausen or the State Court at Bielefeld.
2. We also have the right to have recourse to any other court with jurisdiction according to the ZPO (German Code of Civil Procedure).