

**Terms of Sale and Delivery
of the Bäcker GmbH & Co. KG, Jägersgrund 8, 57339 Erndtebrück**

The Terms of Sale and Delivery are restricted to all purchasers who are not consumers according to § 13 of the BGB (German Civil Code).

§ 1 Order

Our prices stated in all price sheets and offers are subject to alterations and non-binding for any follow-up orders. Oral agreements will only become binding for us with our written confirmation. Our terms are applicable to all orders placed with us, also to any and all future orders. Any deviation from our Terms of Sale and Delivery, in particular the terms of Purchaser, will only be applicable upon our written confirmation. We reserve the right of changes to our models within the scope of further developments and technical improvements, insofar as such changes will be reasonable for Purchaser

§ 2 Invoicing

Our prices are stated unpacked ex works exclusive of VAT.

§ 3 Payment

a)

With respect to tools and tool components (moulds) 50% of the price shall be payable by Purchaser upon placing the order and 50% upon the receipt of the type sample net without cash discount.

b)

Invoices for goods shall be payable net within 14 days after date of invoice.

c)

We are entitled to submit to Purchaser all invoices by electronic means to an email address notified by Purchaser. Purchaser waives the postal mailing of invoices. Purchaser shall ensure as recipient that the electronic transmission of the invoices by email will be properly executed to the email address notified by Purchaser and to adapt technical devices such as filter programs or firewalls accordingly. Any possible automated electronic replies (out-of-office note) cannot be taken into account and will not be in contradiction to a valid delivery. Purchaser shall immediately notify any change of the email address to us in writing and legally binding (by letter or fax).

§ 4 Retention of Title

a)

The goods supplied shall remain in the ownership of Seller, namely until the payment of the purchase price and the payment of any and all liabilities existing in connection with the business relationship at the time of delivery and liabilities, which will result in connection with the subject of purchase as conditional goods. The inclusion of individual liabilities in a current invoice or due to offsetting and their acknowledgment will not set aside the retention of title. If a liability of Seller under a bill will be substantiated in connection with the payment of the purchase price of Purchaser, the retention of title will not be cancelled before the redemption of the bill of exchange through Purchaser as drawee. In case of a delay of payment of Purchaser, Seller will be entitled to take back and Purchaser will be obliged to return the conditional goods after reminder.

b)

If conditional goods will be processed by Purchaser to a new movable item, such processing will be performed for Seller without any obligation from the side of Seller; the new item will be owned by Seller. In case of a processing together with goods not owned by Seller, Seller will acquire the co-ownership to the new item in proportion of the conditional goods to the other goods at the time of processing. If conditional goods will be combined, mixed or blended with goods not owned by Seller according to § 947, § 948 BGB, Seller will become co-owner in accordance with the statutory regulations. If Purchaser will acquire the sole ownership through combination, mixing or blending, Purchaser will already now transfer the co-ownership to Seller in proportion to the value of the conditional goods to the other goods at the time of the combination, mixing or blending. Purchaser shall proceed in these cases free of charge with respect to the goods in the ownership or co-ownership of Seller, which shall also be regarded as conditional goods within the meaning of the following conditions.

c)

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If conditional goods will be sold by Purchaser alone or together with goods not owned by Seller, Purchaser shall already now assign the claims resulting from the resale in the amount of the value of the conditional goods, namely including any and all ancillary rights and ranking prior to the remainder; Seller will accept the assignment. The value of the conditional goods is the invoice amount of Seller plus a safety margin of 20%, which will not be considered insofar as this is in contradiction to any rights of third parties. If the conditional goods resold are in the co-ownership of Seller, the assignment of receivables will be restricted to the amount corresponding to the proportional value of Seller of the co-ownership. Para. a, sent. 2 applies to the prolonged retention of title accordingly; the preliminary assignment acc. to para. c, sent. 1 and 3 will also cover the balance claim.

d)

If conditional goods will be installed by Purchaser as an essential part into the premises of a third party, Purchaser shall as early as now assign any resulting claims for the payment in the amount of the value of the conditional goods, including any ancillary rights and including the right of granting a security mortgage with priority above the remainder towards such third party or towards the party concerned; Seller will accept the assignment. Para. c, sent. 2 and 3 shall apply accordingly.

e)

Purchaser will only be entitled to a resale, use or installation of conditional goods within the scope of customary proper business activities and only under the condition that the receivables according to paras. c, d and e will effectively pass to Seller. Purchaser shall not be entitled to other disposals with respect to the conditional goods, in particular to pledging or chattel mortgage

f)

Seller authorizes Purchaser under reserve of revocation to the recovery of the assigned amounts receivable acc. to para. c, d and e. Seller will not exercise its own right of collection as long as Purchaser will meet its payment obligations, also towards third parties. Upon request of Seller, Purchaser shall name the debtors of the receivables assigned and to notify the assignment to them: Seller is authorized to notify the assignment to the debtors.

g)

Purchaser shall immediately notify Seller with respect to any enforcement measures of third parties regarding the conditional goods or the receivables assigned, namely including the submission of any and all documents required for such objection.

h)

The right for resale, for use or for installation of the conditional goods will lapse upon the suspension of payment, the application for or opening-up of insolvency proceedings or of composition proceedings in or out of court; the collection authorization will also lapse in case of a protest of a cheque or of a bill of exchange.

i)

If the value of the securities granted will exceed the claim by more than 15%, Seller shall insofar be obliged – at its discretion – to reassignment or release. Upon the payment of all receivables of Seller under the business relation, the ownership to the conditional goods and the claims assigned will pass to Purchaser.

§ 5 Delivery

a)

Deliveries or delivery periods, which may be agreed upon as binding or non-binding, must be stated in writing. Binding delivery periods will be prolonged in case of events of force majeure or of other unforeseen, extraordinary and circumstances through no fault, such as difficulties with respect to the procurement of material, breakdowns, strike, lock-out, lack of means of transportation, administrative interventions, energy supply difficulties etc., also if such circumstances will occur with sub-suppliers. If the delivery of goods and the rendering of services will become impossible or unreasonable due to the circumstances named above, we shall be released from the obligation for delivery. If the delays in delivery will last for more than 2 months, Purchaser shall be entitled to withdraw from the contract. If the delivery period will be extended or if the supplier will be released from the obligation for delivery, Purchaser will not be entitled to claim any damages resulting therefrom. Supplier will only be able to rely on the circumstances named above, if Seller will immediately inform Purchaser accordingly.

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b)

Any claims for damages due to delay or due to impossibility to render the service through a fault of us will be limited to 10% of the invoice amount of that part of service in delay or impossible to be rendered due to our fault. This limitation of liability shall not be applicable to those cases, for which a compulsory statutory liability exists due to wilful intent or gross negligence. Partial deliveries are allowed. In the case of deliveries of products according to drawing or parts from our program, but in special colours or with special materials, we reserve the right to carry out the delivery up to 10% above or below the quantities ordered. We reserve the right for colour deviations. If Purchaser will not completely accept the delivery of a number of parts from our program firmly agreed upon in the contract, we shall be entitled to charge a minimum quantity surcharge. Unless agreed upon otherwise, call orders shall be called by Purchaser within half a year.

§ 6 Right to Withhold Performance

As long as Purchaser will be in delay with a liability, our obligation for delivery will be suspended. In case of any doubts with respect to the solvency of Purchaser, we will be entitled to make the further fulfilment of the contract of delivery conditional on securities or to request advance payments.

§ 7 Shipment and Packaging

All shipments will travel at the risk of Purchaser, even in case of freight-paid delivery. Unless Purchaser determines any other procedure, we will select the cheapest way of transport, whereby we cannot be made liable for any freight differences possibly occurring. The packaging will not be accepted by us in return.

§ 8 Defects and Returning of Goods

a)

Purchaser is obliged to immediately - at the latest, however, within 8 days after the receipt of the subject of delivery – inform us in writing about any obvious defects and to describe such defect in detail. Any defects, which cannot be detected despite a diligent inspection within this period of time, must be notified to us in writing immediately after detection and must be described in detail. Any violation of this regulation will exclude the enforcement of a warranty claim.

b)

In case of a justified notice of defect, we may – at our discretion – provide supplementary performance through improvement or replacement delivery. If remedying the defect will be unsuccessful after a stipulation of a reasonable period of time through Purchaser, Purchaser may request – at its discretion – a decrease of the payment (reduction) or the annulment of the contract. Purchaser will, however, not be entitled to the right of annulment in case of a minor contractual violation of the performance, in particular in case of minor defects.

c)

Any further claims – irrespective of the kind – will be excluded. Any goods complained about shall only be returned to us upon our express consent.

d)

A returning of goods not complained may only be carried out upon prior agreement with us. The return delivery shall be freight-free. As a compensation for the costs incurred for the order processing and acceptance of return delivery, we will deduct a handling fee in the amount of 15% of the value of the goods, at least, however, € 20.00 from the value of the goods to be credited.

e)

In case of parts to drawing, the quality and the workmanship of the average outturn samples will be decisive which we had presented to Purchaser for inspection. Purchaser will be solely responsible for the proper design of injection-moulded parts as well as for their practical suitability, even though Purchaser had been advised by us with respect to the development.

f)

Our liability for defects for second-hand goods is altogether excluded. Our liability for defects for new goods become time-barred within twelve months towards ordering parties, who are not consumers. In deviation herefrom, claims for damages due to defects of quality become time-barred within fifteen

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months. The start of the limitation period will always be the time of the receipt of the goods at the ordering party.

g)

We will only be liable, if the damage had resulted from the culpable breach of an essential contractual obligation in a way endangering the achievement of the purpose of the contract obligation or in case of gross negligence or wilful intent. This is not applicable to loss of life, physical injury and damage to health. The claim for damages for the violation of essential contractual obligations is limited to the contract-typical, foreseeable damage; this is also applicable to gross negligence but not in case of loss of life, physical injury and damage to health. Our liability for damages caused by the subject of delivery/scope of delivery to other legal assets of Purchaser is excluded. This is not applicable in case of wilful intent or gross negligence as well as **in case of loss of life, physical injury and damage to health**. The provision of §8 g) is applicable in addition to performance as well as instead of performance, irrespective of the legal ground, in particular in connection with defects, with the violation of obligations under the debtor relationship or due to unlawful act as well as in case of the reimbursement of frustrated expenditure.

§ 9 Information

Any and all information about processing and application options of the products sold by us, technical consulting or other data are made to the best of our belief but are non-binding and with the exclusion of any liability.

§ 10 Injection Moulds and Mould Parts

a)

The price for moulds also includes the costs for one-time sampling but not the costs for test and processing devices as well as for modifications initiated by Purchaser. Costs for further sampling, for which we are responsible, will be borne by us.

b)

Unless otherwise agreed upon, we are and will remain the owner of moulds manufactured for Purchaser by us or by a third party instructed by us. Moulds will only be used for orders of Purchaser as long as Purchaser will meet its payment and purchase commitments. We will only be obliged to a cost-free replacement of these moulds if these are required to fulfil the output quantity assured to Purchaser. Our obligation for storage will lapse two years after the last delivery of parts from the mould and upon previous notification of Purchaser.

c)

If Purchaser will become the owner of the moulds according to agreement, the ownership will pass to Purchaser after the full payment of the purchase price. The handing-over of the moulds to Purchaser will be replaced through the storage in favour of Purchaser. Irrespective of the statutory claim of Purchaser to hand out the moulds and from the lifetime of the moulds, we are entitled to the exclusive ownership until the termination of the contract. We have to mark the moulds as third-party property and to insure the moulds upon the request and at the cost of Purchaser.

d)

In the case of moulds owned by Purchaser according to para. c) and/or moulds placed at disposal by Purchaser by way of lending, our liability with respect to storage and maintenance will be limited to the diligence as used in own matters. The costs incurred for the maintenance and insurance shall be borne by Purchaser. Our obligations will lapse, if Purchaser will fail to collect the moulds within an adequate period of time after the completion of the order and the respective request. As long as Purchaser will fail to meet its contractual obligations to the full extent, we will have a title of retention with respect to the moulds in any case.

§ 11 Industrial Property Rights

Insofar as we will manufacture items according to drawings, models or samples received from Purchaser, Purchaser will warrant towards us that the manufacture and delivery of these items will not violate any industrial property rights of third parties. If a third party will prohibit us from the manufacturing and delivery of items produced in accordance with drawings, models or samples of

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Purchaser with reference to an industrial property right owned by such third party, we will be entitled to cease the manufacturing and delivery and to request compensation of costs incurred, without the need to check the legal situation and with the exclusion of any claims for damages of Purchaser. Purchaser will be obliged to immediately hold us harmless from any claims for damages of third parties. With respect to any indirect and direct damages resulting from the violation and enforcement of any possible industrial property rights, Purchaser shall pay to us an adequate advance payment upon our request. Samples or drawings submitted to us will only be returned upon request. If a contract will not materialize, it is allowed to destroy samples and drawings 3 months after the submission of the offer.

§ 12 Minimum Invoice Value

The minimum invoice value for domestic invoices amounts to € 100.00; a handling fee of € 35.00 will be charged for amounts below that value. The minimum invoice value for export consignments amounts to € 130.00; a handling fee of € 35.00 will be charged for amounts below that value.

§ 13 Set-off

Purchaser will only be entitled to set-off, to retention or reduction, even though defects or counter-claims are made, if counter-claims have been finally determined or are undisputable. The exercising of a right of retention will only be allowed if the counter-claim results from the same legal relationship.

§ 14 Applicable Law

The laws of the Federal Republic of Germany shall be applicable to all legal disputes.

§ 15 Place of Legal Venue / Place of Performance

The place of performance for any and all liabilities resulting from a contract concluded with us shall be 57339 Erndtebrück-Schameder. The competent court for the domicile of our company is agreed upon as the place of legal venue. Upon placing the order, Purchaser accepts our Terms of Sale and Delivery as solely decisive. In the case of subsequent orders, a reference to these terms through us will be sufficient to make such terms as solely decisive for subsequent orders.

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