

General Sales and Delivery Conditions

BDT Print Media GmbH, Rottweil

1. Area of application

1.1 Delivery of goods, an offer, order confirmation, acceptance or the sale of any goods are made by BDT Print Media GmbH (herein after referred to as „BDT“) exclusively on the basis of these General Sales and Delivery Conditions (GSDC) of BDT.

Contrary terms and conditions of the customer or customer's terms and conditions which deviate from BDT GSDC are not accepted unless BDT provides a written consent to the deviation of the terms. In addition, deviating terms and conditions will not become part of the contract even if we do not expressly disagree with them.

These General Sales and Delivery Conditions (GSDC) also apply in the event that BDT, being aware of conflicting or differing terms and condition of the customer, executes the delivery to the customer without reservation.

1.2 The General Sales and Delivery Conditions (GSDC) apply for all current and future business with the customer.

2. Offers and order confirmation

2.1 BDT offers are non-binding, unless explicitly marked as binding or if they contain binding commitments or if any other commitments were explicitly agreed. Offers are requests for an order.

The customer is bound to his order, as a request for contract, 4 weeks after the order has been received, insofar as the customer does not expect a later acceptance by BDT on a regular basis (§ 147 BGB). This also applies to repeat orders of the customer. A contract is created – also in the current course of business– only then when BDT confirms the acceptance of the customer's order by an order confirmation in writing or by telefax or electronic communication including but not limited to e-mail.

The order confirmation is only valid under the condition that outstanding payments of the customer are balanced and that a credit check performed by BDT does not show a negative result. In case of delivery or performance within the period of commitment of the customer, related to the subject of the offer, the order confirmation can be replaced by the delivery, in which the shipping of the goods is relevant.

2.2 All documents, technical drawings, weight and dimensional data, samples, etc, which are included in the offer, are only approximate information and represent no characteristic of state. BDT has the right to deviate from the descriptions in the offer if the deviation is not of fundamental and essential nature and if there is no restriction to the contractual purpose.

2.3 When BDT manufactures parts based on customer drawings, the drawings created by BDT and approved by the customer are relevant. Deviations from approved drawings need to be particularly agreed upon and possible additional cost must be reimbursed.

3. Industrial Property Rights

3.1 BDT reserves its right of property and copyright on all images, drawings, calculations and other documents. This applies especially for written documents which are marked as 'Confidential'. They can only be shared by the customer with 3rd parties after prior written permission from BDT.

3.2 Are deliveries being carried out which are based on drawings or other information from the customer and if herby property rights of a 3rd party are being claimed, the customer shall release BDT in internal relationship (inter se) from all claims shall provide compensation for the damages including the coverage of all costs occurred at BDT for defence of such claims.

4. Prices

4.1 If there are no written contrary provisions, the delivery will be ex works and the terms and definitions of the Incoterms 2010 apply. If the customer is in default in calling off, accepting or collecting goods, the goods will be shipped to the account/charge of the customer.

The cost for packaging is being charged to the customer and is invoiced separately. The customer is responsible for the loading of the transport vehicle at his own cost. The risks of accidental perish/destruction or the chance of deterioration in quality of the goods shall be transferred before loading to the transport vehicle.

4.2 The noted prices are ex works respectively warehouse, they are generally net in Euro, excluding sea or air freight packaging, freight, postage and if a transport insurance has been agreed, insurance cost, plus the VAT (where applicable by law) to be paid by the customer in the amount mandated by the law, plus possible country specific fees when shipping in other countries other than Germany, plus duty and other fees and public dues for the delivery/performance.

4.3 Possible additional expenses caused by later change requests can be charged by BDT to the customer.

4.4 BDT is entitled to raise the compensation unilaterally in case of increasing cost for material production and/or cost of material procurement and/or product procurement, wage labour cost and non-wage labour cost, social security contributions, energy cost and cost for environmental levies and/or currency fluctuations and/or changes in customs regulations and/or freight cost changes and/or public levies, if these cost directly or indirectly influence the cost for manufacturing or procurement of the product or the cost for the contractual agreed performance and if there is a more than 4 month period between contract conclusion and the delivery. If the new price, due to the above mentioned right for price adjustment, is 20% or more above the original price, the customer is allowed to withdraw from contracts which are not yet completely fulfilled.

The customer can claim this immediately after being notified of the increased price only.

5. Payment Terms

5.1 Invoices are due within 20 days of the invoice date noted on the invoice without any deductions. Discount is only possible if explicitly agreed by BDT in writing.

5.2 BDT is entitled to offset a received payment against the oldest not titled liabilities of the customer even if the payment terms of the customer are different. If there has already been cost or interest generated, BDT is entitled to offset the payment first against the cost, then the interest and last against the main service/performance.

5.3 The customer is entitled to compensation only if his claims have been established by a final and non-appealable court decision, if they are undisputed or if they are accepted in writing by BDT.

The customer's right of retention is limited to receivables of the contract.

5.4 BDT is entitled to charge default interest at a rate of 8% points above the annual base rate in accordance with German civil code § 247 BGB. BDT's right to claim further damages is not excluded.

5.5 In case the payment is done by a contract based on a letter of credit, the customer will establish, immediately after contract conclusion, an irrevocable and confirmed letter of credit with sight draft to the benefit of BDT, at a first class bank accepted by BDT, with international reputation and with a validity period of at least 20 days longer than the last day of the respective delivery. This letter of credit has to be establish in a form satisfactory for BDT with for BDT satisfying conditions and needs to allow explicitly a partial delivery as well permitting reimbursements of the amounts to BDT which, if applicable, had been paid in advance at the expense of the customer for consular invoices,

test/certification cost and other expenses. If payments, in the scope of the letter of credit, are not carried out orderly, the customer, on notice from BDT, has to immediately perform a direct and unreserved cash payment to BDT plus accrued interest from the date when the payment according the letter of credit was due until the date of the payment of the customer.

All banking charges outside of Germany including will cost for debt collection and stamp duty will be charged, if applicable, to the customer provided that confirmation commissions are being charged to the customer regardless if they are charged inside or outside of Germany.

The customer has to pay, in addition to the price for goods and services noted in the contract, all taxes, levies and other tax related cost of all kinds, which are imposed for the sale of goods and the performance of the services, amongst others VAT and customs fees. All payments in the scope of the contract have to be executed by the customer without any deductions and offsetting or counterclaims of any kind, on which the customer elsewhere possibly has an entitlement, in case this is not being acknowledged by BDT or has been established by a final and non-appealable court decision. The due date for the payment fulfillment in the scope of the contract respectively the establishing of a letter of credit or other arrangements for the payment is an essential part of the contract.

If BDT agrees to grant a customer credit, BDT can at any time, at its sole discretion, limit or cancel the credit for the customer as well as claim the payment of all or any parts of the price for the goods or services in cash before delivery respectively claim the provision of guarantees or other collaterals; any in this way claimed payments or collaterals have to be executed respectively provided by the customer immediately after request.

BDT is not obligated to deliver goods or perform services, if the customer doesn't fulfill these terms and all of his other obligations towards BDT in the scope of the contract or other invoices.

In case of the delay of payments of any amounts to BDT the customer has to pay interest charges at a rate of 8% points above the base rate of the ECB (European Central Bank) from the due date to the actual payment date.

BDT is entitled to offset all amounts which BDT owes the customer with the amounts of the customer which are falling due, regardless of the contract or other invoices.

6. Deliveries / Delivery Times / Delivery Default

6.1 Delivery times and delivery dates are considered as agreed and binding only if they are explicitly agreed in writing in the order confirmation.

BDT is not bound to the delivery date respectively the delivery time if the customer does not fulfill his obligations in time (Payments of deductions, delivery of documents, etc.).

BDT's right to object if the contract is not fulfilled shall be retained.

6.2 Delivery times start at the earliest with the date when the contract is entered into in writing. The start implies the clarification of all technical questions.

6.3 In case of later change requests of the customer BDT is released from adhering to the delivery date.

6.4 The delivery time is considered as met, if the delivery item has left the premises of BDT before the due date or if BDT has notified the Customer about the readiness for shipment.

6.5 In case of delivery default by BDT, the customer has to grant BDT initially an adequate grace period to perform of at least 14 days – if not unreasonable.

6.6 If the customer is in default of accepting goods or neglects other obligation to co-operate, BDT is entitled to claim the insofar generated damage plus possible generated additional expenses to be reimbursed.

Beyond that, BDT is entitled to set the customer an adequate acceptance period and after its unsuccessful expiration, is entitled to withdraw from the contract and claim damage compensation instead of the performances.

7. Acceptance

7.1 Unless otherwise defined and confirmed by BDT in writing provided performances generally imply the written acceptance of the customer (such as Sign-off of service report, acceptance report or acceptance protocol etc.). In these cases BDT is entitled to demand a partial acceptance of definable and economically independent partial performances where the last partial acceptance shall count as final acceptance.

As soon as the contractual performances or parts of it are concluded, BDT will provide the respective service report and/or the acceptance protocol to the customer unless otherwise communicated and confirmed by BDT in writing. In this case the customer agrees to declare the acceptance immediately but not later than 1 week after receipt of this document; in case of shortcomings which compromise the overall functionality only negligibly, the acceptance cannot be denied. Where necessary, such deviations shall be noted in the acceptance protocol and corrected within the scope of warranty.

If the acceptance test exhibits significant deviations from the agreed performance, the customer is entitled to refuse the acceptance and set an adequate period for BDT to make up leeway for the contractual performance, after which a new acceptance inspection shall be performed. The acceptance (partial acceptance) counts as declared even if the customer doesn't declare acceptance after the adequate period has ended or if he refuses the acceptance without sufficient reasons.

8. Retention of Title

8.1 BDT is entitled to take the goods back if the customer fails to meet his obligations, especially if he is in default with payment.

8.2 The customer is obliged to handle the delivered goods with care and shall insure them at replacement value against any form of loss at his own expense for the duration of the retention of title period.

BDT stays entitled to insure the goods itself at the expense of the customer and to charge the cost. Claims against the insurer as the result of a liability case of the goods subject to retention, are hereby already assigned to BDT, at the amount of the value of the goods subject to retention of title.

8.3 During the period of retention of title, the cost for maintenance and inspection has to be carried by the customer, even if they are performed by BDT.

8.4 Seizures or other legal or actual access by third parties to the goods subject to retention of title must be promptly notified in writing to BDT by the customer to allow BDT third party proceedings.

As far as the third party is not able to reimburse the judicial and extra judicial cost of such a claim, the customer shall be liable for it.

8.5 The customer may sell the goods subject to retention of title in the normal course of customer's business; However the customer assigns already hereby all receivables, which arise from the resale to its customer or third party, to BDT at the amount of the final invoice price (including VAT), irrespective whether the goods subject to retention of title have been resold with or without being processed.

The customer stays entitled to collect receivables even after delivery. The entitlement of BDT to collect the receivable itself isn't affected by this. However BDT pledges to not collect the receivables, as long as the customer fulfills his payment obligations from the collected proceeds and isn't in default of payment and in particular no request for the opening of an insolvency proceedings has been filed and if there is no cessation of payment.

8.6 If the goods delivered by BDT are inseparably mixed or combined with other goods which do not belong to BDT, BDT acquires joint title to the new thing or combined thing in proportion of the value of the delivered goods (final invoice value including VAT) compared to the value, at the time of combination or mixing, of the other things.

The wholly or jointly owned property hereby created is kept by the customer on BDT's behalf.

9. Shipping, Transfer of Risk

9.1 If nothing contradictory has been agreed in writing, the shipment will be performed according ex works Incoterms 2010. If the customer is in default in calling off, accepting or collecting goods, the goods will be shipped at the expense of the customer.

The cost for packaging is being charged to the customer and is invoiced separately.

The customer is responsible for the loading of the transport vehicle at his own cost.

The risk of accidental perish/destruction or the chance of deterioration in quality of the goods shall be transferred before loading to the transport vehicle.

9.2 In the case of delay of delivery due to circumstances which aren't caused by BDT, the risk will be transferred to the customer at day of the shipping readiness.

On written request of the customer and after agreement by BDT the shipment will be insured by BDT against breakage, transport, fire and water damage at the expense of the customer.

9.3 Returns of transportation packaging and other packaging compliant with the regulation on packaging are not accepted by BDT; exceptions are Euro pallets after agreement by BDT.

The customer is obliged to dispose of packaging at his own expense.

10. Warranty / Liability

10.1 BDT is not liable for damages caused by improper handling, wear, storage, performed modifications or other operations of the customer or a third party.

10.2 The legal claims of a warranty case become time-barred 1 year after the handover of the goods. A lifetime warranty is excluded.

10.3 In case of resale of the goods, the customer is also obligated to fulfill his obligation to inspect according to § 377 HGB.

10.4 BDT has the choice to either remedy the defect or deliver defect-free goods.

10.5 Expenses related to remedy shall not be carried by BDT if the expenses have been increased due to the goods have been moved after the delivery to another location different than the place of business of the customer. This doesn't apply if the moving is according to the designated use of the goods

10.6 The recourse right of the customer against BDT regarding such claims from defects liability which are claimed by the buyers of the customer, is excluded, if the customer didn't meet his obligation to inspect and complain or if the goods have been modified through processing.

10.7 The liability of BDT for compensation according to the legal provisions apply unrestrictedly, if a BDT related breach of duty is caused by intent or gross negligence. If a BDT related breach of duty is caused by simple negligence and a substantial contractual obligation has been culpably breached, the liability for damages is limited to the foreseeable damage which typically occurs in comparable cases. Apart from that, the liability is excluded.

10.8 The liability according the regulations of Product Liability Code shall remain unaffected. The liability regarding violation of life, body and health shall also remain unaffected.

11. Non-Assignment Clause

All rights of the customer against BDT resulting from the contractual relationship cannot be transferred.

12. Product Liability

12.1 The customer has to use the goods only according to its intended use and has to ensure that these goods will be resold to persons who are familiar with the product related hazards and risks.

12.2 The customer is obligated, if the goods are used as base material or partial product of his own products, when putting the end-product into circulation, to comply with his duty to warn also in regards of goods which have been delivered by BDT.

Inter se the customer shall indemnify BDT from the claim of breach of this obligation on first request.

13. Force Majeure

In the case that BDT is unable to fulfill the duties within the scope of the contract due to Force Majeure, such as natural disaster, floodwater, typhoons, earthquakes, floods, landslides, fires, epidemic, epidemic diseases, quarantine, labour disputes, accidents, total or partial failure of machines, systems, transport or loading equipment, official regulatory requirements, directives, regulations, unavailability of transport or loading equipment, reduction, shortage or outage of fuel supply, water supply, energy supply, respectively the supply of other materials or raw materials including crude oil, mineral oil or mineral oil products, bankruptcy or insolvency of the producer or supplier of goods or services by reduction, significant changes of the current international monetary systems, or any other causes or circumstances which are out of control of BDT, which are directly or indirectly related to activities of others, to BDT related persons, companies or corporations in charge/assigned to sale, production, delivery, shipment or performance delivery, BDT is not liable according to the scope of contract for loss or damage, respectively failure of performance or delay of the delivery of the performance and can, on BDT's discretion, without reservation and without liability, extend or cancel the deadline for shipment or performance fulfillment for the portion of the contract that is so affected.

14 Miscellaneous

14.1 Place of performance for all contractual obligations is Rottweil.

14.2 Sole place of the governing law is the registered business office of BDT. The regulation regarding jurisdiction of chapter 14.1 und 14.2 applies, to make it clear, also for such facts of a case between BDT and the customer, which could lead to non-contractual claims in reference to VO (EG) Nr. 864/2007. BDT however are also entitled to take the customer to court at his place of general jurisdiction.

14.3 Governing law is solely the German Law. Any legal relations between the customer and BDT are governed by and construed solely in accordance with the laws of the Bundesrepublik Deutschland, in particular the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded. It is expressly clarified that this choice of jurisdiction is to be understood as such in reference to Art. 14 Abs. 1 b VO (EG) Nr. 864/2007 and should apply therefore also for non-contractual claims in terms of this regulation. In case that foreign law is mandatory to apply, our GTCS are to be construed in that way that its aiming commercial purpose is preserved as much as possible.

14.4 Insofar single regulations of the contractual relationship are legally void, the validity of the remaining regulations remain unaffected. The parties shall make efforts to replace the ineffective regulations with effective ones which correlate most closely to the economic purpose of the contract.

14.5 Insofar trading clauses have been agreed according to the international commercial terms (Incoterms), Incoterms 2010 applies.

14.6 All agreements, side agreements, confirmations and modifications of the contract need to be made in writing. The same shall apply for any waiver of the written-form requirement. The primacy of the individual agreement in written, text or oral form (§ 305 b BGB) shall be unaffected.