

General Delivery and Payment Terms of baier & michels GmbH & Co. KG

I. Definition, Area of Application

1. The following terms and conditions are valid exclusively. They are not valid for consumer transactions. Contrary regulations terms of differing terms of the purchaser won't be accepted by baier & michels GmbH & Co. KG (hereinafter referred to as b&m), unless b&m expressly agreed to their validity in written form. The following terms are valid even if b&m carries out an unconditional delivery in knowledge of terms that are contrary to or deviating from b&m terms.
2. Differing arrangements or subsidiary agreements referring to these terms are valid only if they are confirmed in written form by b&m.
3. These terms also apply to future deliveries.

II. Quotations, Order Acknowledgements

1. If the purchase order is qualified as a quotation according to § 145 German Civil Code, b&m is entitled to accept it within four weeks.
2. A delivery contract is effective only by written confirmation of order, at the latest at dispatch of the goods. Transmissions via remote data communication comply with the written form. If b&m is able to prove that a declaration was sent via fax or remote data communication by means of a transmission report, it is assumed that the purchaser received the declaration.
3. If b&m uses a teleservice or media service for closing a contract, the purchaser will forego disclosing information as defined by the executive order law according to entry 241 Introductory Act to the German Civil Code as well as forego receiving a confirmation of the purchase order. Purchase orders forwarded electronically are only considered received if they are retrieved and opened by b&m. b&m reserves the right to delete unopened purchase order.

III. Prices – Terms of Payment

1. All prices from b&m are to be understood ex stock plus the current valid VAT at the date of issuing the invoice.
2. Changes in prices are permitted if more than six weeks lie between the conclusion of the contract and the agreed delivery date. If salaries, material costs or purchase prices increase after this date up until the completion of delivery, we are entitled to increase the sales price in accordance with the increase in costs.
3. Payments are due when the goods have been delivered, at the latest upon receipt of the invoice as far as no other agreements have been settled. Invoices are due for payment without deduction as far as no differing agreements have been made. Irrespective of these terms, b&m is always entitled to make a delivery dependant on a step-by-step-payment without reason.
4. The day of payment receipt for all means of payment is the date at which b&m or third parties with a claim against b&m have the payments at their disposal.
5. Set-off rights are only entitled to the purchaser if his counterclaims are legally ascertained,

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undisputed or accepted by b&m. Furthermore, the purchaser is authorized to exercise the right of retention as far as his counterclaim is based on the same contractual agreement.

6. The purchaser can be put in default via payment reminders after the due date besides legal premises. If the date of payment is appointed to a fixed date, the purchaser will be in default even without a reminder. In case of a default of the purchaser, b&m is furthermore entitled to retain all deliveries, goods or services.

IV. Reservation of Proprietary Rights

1. b&m reserves the right of ownership over the items to be delivered until all payments referring to the business connection with the purchaser have been received.
2. The assertion of the reservation of proprietary rights as well as the distraint of delivery items is not regarded as a withdrawal from the contract, unless the terms of the Consumer Credit Act are applicable or this is expressly declared by b&m in written form.
3. The purchaser is entitled to resell the delivery items in the regular course of business; by this he already assigns all claims on the amount of the purchase price (VAT included) agreed between b&m and the purchaser and which accrue from the resale to b&m independent of the fact if the delivered items are resold in their original form or otherwise. The purchaser is entitled to sue these debts after the assignment. The authorization of b&m to sue the debts itself remains unaffected by that, nevertheless b&m is committed not to sue the debts as long as the purchaser duly fulfils his financial obligations and does not get into default. If this is the case, b&m can demand that the purchaser discloses the assigned claims and its debtors, provide all required details to carry out the collection, to hand out all the corresponding files and to announce the assignment to all third party debtors.
4. The processing or reshuffling of goods by the purchaser is only done for b&m. If the delivered goods are processed with other goods not belonging to b&m, b&m will acquire the co-ownership of the new good in relation of the value of the delivered goods to the other processed goods at the time of the processing.
5. If the delivered goods are mixed inseparably with other goods not belonging to b&m, b&m will acquire the co-ownership of the new object in relation of the value of the delivered goods to the other mixed goods. The purchaser will safeguard the co-ownership for b&m.
6. The purchaser is not allowed to pawn or pledge the delivered goods. In case of pledging, confiscation or other powers over these goods by third parties, the purchaser has to inform b&m immediately and provide all information and documents which are required to protect its rights. Bailiffs or third parties respectively are to be informed about the property of b&m.
7. b&m is obliged to release the entitled securities if required by the purchaser, provided that they exceed the value of the claims which have to be secured and not yet been settled by more than 20 %. b&m is entitled to choose the securities which have to be released.

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V. Deliveries, Delivery Time

1. Meeting of agreed delivery and service dates is conditional to the fact that all technical questions have been clarified and payments or other obligations of the purchaser are on hand or rather fulfilled on time. Otherwise, the time limit will be extended proportionately.
2. b&m will deliver the ordered goods to the purchaser subject to a punctual and correct self-supply.
3. Partial deliveries are admissible as long as they do not trigger disadvantages for usage.
4. With regard to consumer goods, b&m reserves the right of excess or short delivery of up to 10 %.
5. In case of a delay in delivery at the purchaser's instigation, the goods will be stored at b&m at the risk and costs of the purchaser.
6. Referring to the specified measurements of the delivered goods, b&m reserves the right of deviations in accordance with standard commercial practice, unless the observance of the measurements was assured expressively.
7. The delivery time will be extended by the length of the hindrance in case of force majeure, strike, inability not attributable to one's own fault or in case of adverse weather conditions.
8. If the purchaser gets into default of acceptance or breaches other duties to cooperate, b&m is entitled to prefer other orders from third parties and to extend the delivery time adequately. Without prejudice of further claims b&m is entitled to demand compensation for the occurred damage, any additional expenditures included.

VI. Delay in Delivery

1. If b&m gets into delay in delivery, the purchaser is entitled to a lump sum payment in claim for damages. The amount is fixed to 0.5 % of the purchase price for each full week of the delayed delivery up to a maximum of 7.5 %.
2. If b&m is in delay with a partial delivery, this lump sum in claim for damages is to be charged on the basis of the parts not yet received.
3. The purchaser will lose the pecuniary claim of the lump sum in claim for damages, if the claim has not been asserted within six months starting from the time when the delivery should have been carried out.
4. The assertion of damage caused by default exceeding the lump sum in claim for damages is excluded, unless b&m would have caused the delay intentionally or in gross negligence, or the claim for damage is caused by a fundamental breach of contract or the delay caused an injury in life, body or health.

VII. Despatch – Transfer of Risk

1. As long as the order confirmation does not contain other agreements, b&m bears the delivery charges. The customer bears the risk and costs of the despatch. This is also applicable to return consignments.

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2. Transport packaging as well as every other kind of packaging are non-returnable.

VIII. Patent Rights

The customer commits himself to inform b&m immediately on claims for property rights by third parties regarding the delivered products and to leave the legal defence to b&m at their own costs. Due to claims for property rights of third parties, b&m is entitled to carry out necessary changes at own cost even on goods already delivered and paid.

IX. Warranty / Compensatory Damages / Liability

1. b&m has to be notified on apparent defects and censured without delay. If there is a defect for which b&m is responsible, b&m can choose to either rectify the defects or replace the delivery. In case of rectification of defects, b&m is committed to bear all the costs required to remedy the defect, especially freight charges, transport expenses, road tolls, labour costs, and cost of materials, as long as the costs do not increase due to fact that goods are transported to a different destination other than the place of delivery.
2. If the supplementary performance fails, the purchaser is entitled to claim damages according to the following regulations and demand a reduction in accordance with the payment of this order as well as withdraw from the contract. If the purchaser had granted b&m an adequate deadline for the supplementary performance, he is entitled to claim damages instead of performance or rather reimbursement of expenses according to the following regulations. If the object of purchase is missing one of the assured or guaranteed properties, b&m is liable according to legal regulations.
3. Warranty claims on defects that b&m is not responsible for are excluded, unless it is based on the absence of an assured or guaranteed property.
4. Claims according to §§ 437, 634a of the German Civil Code are subject to a limitation period of 12 months after the transfer of risk.
5. b&m is liable according to legal regulations as long as the purchaser asserts a violation of life, body or health or damages for which b&m is responsible because of intention or gross negligence, including intention or gross negligence of agents or subcontractors of b&m. As far as b&m acts in gross negligence, the liability for compensatory damages is limited to the predictable, typically occurring damage.
6. b&m is liable according to legal regulations as far as b&m culpably violates an essential contractual duty; in this case the liability for damages is limited to the predictable, typically occurring damage.
7. Furthermore, b&m is liable for the regulations according to the Product Liability Act.
8. In addition, the liability for compensatory damages irrespective on which kind of legal ground is excluded, apart from the damage caused by delay agreed elsewhere. In this respect, b&m is not liable for damages which did not happen to the delivered object itself.

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X. Place of Performance, Place of Jurisdiction, Applicable Law, Miscellaneous

1. As long as no other regulations are specifically agreed, the registered office of b&m is the place of performance.
2. If the purchaser is a merchant, a juristic person governed by public law or an agent of special business assets of public law, the responsible law is the place of jurisdiction of the registered office of b&m. Nevertheless, b&m is entitled to file suit against the purchaser at its general place of jurisdiction. The same is applicable if the purchaser has no general place of jurisdiction in his domestic country or if he moved his place of residence or usual residence out of his domestic country after placing the contract, or if his place of residence or usual residence is unknown at the time of the lawsuit.
3. If one of the regulations of these terms or a part of a regulation should be ineffective or become ineffective, the other regulations or rather the residual part of the regulation will remain valid.

XI. Foreign Contracting Parties

If the contracting party maintains his plant outside the Federal Republic of Germany, the terms mentioned above are valid by exclusive application of German law unless other terms are agreed as follows.

1. Warranty / Compensatory Damages / Liability
 - 1.1. b&m has to be notified on apparent defects and censured without delay. If there is a defect for which b&m is responsible, b&m can choose to either rectify the defects or replace the delivery. In case of rectification of defects, b&m is committed to bear all the labour and material costs required to remedy the defect, as long as the costs do not increase due to fact that goods are transported to a different destination other than the place of delivery. This reimbursement of costs is limited to three-times the amount of the value of the defect article.
 - 1.2. If the rectification of defects or replacement delivery fails, the purchaser is entitled to claim a reduction in accordance with the payment of this order, or in case of a fundamental breach of contract to claim for a cancellation of the contract.
 - 1.3. If b&m is not responsible for the defect, warranty claims are excluded.
 - 1.4. If b&m owes a specific obligation, a replacement is excluded in case of a defect.
 - 1.5. b&m is liable according to the legal regulations as far as the purchaser claims for damages based on intention.
 - 1.6. Furthermore, b&m is liable according to the regulations of the Product Liability Law.
 - 1.7. In addition, liability for compensatory damages is excluded. b&m is explicitly not liable for damages which did not occur to the delivered goods themselves.
 - 1.8. The period of liability for defects is six months, beginning from the transfer of risks. This period is a period of limitation and is also valid for claims to replace consequential harms caused by a defect, as far as no tort claims are demanded; for these claims the legal period

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of limitation is applicable.

2. Period for Claims, Exceeding the Period of Warranty

2.1. Concealed defects have to be claimed within 10 working days after their detection.

2.2. Warranty claims are not applicable on defects which are detected after the end of the period for claims.