

Conditions of Sale and Delivery

Section 1 Scope of Application

(1) The services and offers of Bänninger Kunststoff-Produkte GmbH (hereinafter known as the Supplier) are performed exclusively on the basis of these terms and conditions of sale and delivery. These terms and conditions shall also apply to all future business transactions with the contract partner (hereinafter known as the Buyer), even if they have not been expressly agreed for each transaction. The Supplier does not recognize the application of the Supplier's General Terms and Conditions of Business deviating from these terms and conditions of sale and delivery, unless the Supplier has expressly agreed in writing to their application.

(2) Any and all agreements which have reached between the Supplier and the Buyer for the performance of this contract have been recorded in writing in this contract. Additional oral agreements have not been concluded between the Supplier and the Buyer.

(3) These terms and conditions of sale and delivery shall, at the latest, be deemed accepted upon acceptance of the goods or service by the Buyer.

(4) These terms and conditions of sale and delivery are applicable only with respect to companies in the sense of Section 310 BGB (Civil Code).

Section 2 Offer, Conclusion of Contract and Guarantee

(1) Any and all offers submitted by the Supplier are non-binding. Statements of acceptance and any and all orders shall not be legally effective unless confirmed in writing by the Supplier. If the Supplier does not send an order confirmation, the contract shall be deemed concluded if the Supplier delivers pursuant to the order and the Buyer accepts the goods.

(2) Drawings, pictures, dimensions, weights or other performance data contained in tables, advertising brochures, catalogues or similar documents from the Supplier are binding only if expressly agreed in writing.

(3) The Supplier shall be deemed to have given a guarantee only if and when the Supplier has designated in writing the relevant property as "guaranteed".

Section 3 Delivery Deadlines and Delivery Periods

(1) Delivery periods shall be binding only if expressly agreed in writing. Any and all other delivery deadlines are merely non-binding or approximate delivery dates or periods, which the Supplier will strive to observe.

(2) Delivery periods begin on the day of dispatch of the order confirmation by the Supplier, but not until all details of the performance of the delivery have been clarified and any and all conditions to be met by the Buyer have been fulfilled. If the Buyer requests changes after placing the order, a new delivery period shall commence upon confirmation of the change by the Supplier.

(3) Deliveries may be made before the lapse of the delivery period. The Supplier may forego sending an order confirmation if the goods are delivered immediately. In these cases, the confirmation may be replaced by a delivery note.

(4) The day of notification of readiness for dispatch, in other cases the day of dispatch of the goods, shall be deemed the delivery day. Deliveries ordered by call-up shall be accepted no later than six months after the order confirmation.

(5) The Supplier is entitled to make partial deliveries. Each and every partial delivery shall be deemed a separate and independent transaction.

(6) If the Supplier is in default of delivery, the Buyer must first grant to the Supplier a reasonable extension period. If this extension period lapses in vain, the Buyer may assert his rights according to, and subject to the conditions in, Sections 280, 281, 284, 286, 323 BGB.

(7) If, due to reasons for which the Supplier is not responsible, the Supplier's own suppliers do not perform deliveries or services, or do not perform them correctly, or do not perform them in due time, or in the event of incidents of force majeure, the Supplier shall notify the Buyer thereof in writing in due time. In these cases, the period shall be extended by the duration of the hindrance. The following circumstances are the equivalent of force majeure: industrial actions, intervention by government authorities, energy and raw material shortages, transport bottlenecks through no fault of the Supplier, operational disruptions through no fault of the Supplier such as fire, water damage and machine malfunctions, and any and all other hindrances which were, when viewed objectively, not culpably caused by the Supplier. If a delivery date or a delivery period has been agreed as binding, and if the agreed delivery date or the agreed delivery period is exceeded by more than two months as a consequence of various events, the Buyer is entitled to cancel the part of the contract which has not been fulfilled.

Section 4 Shipment and Transfer of Risk

(1) In the absence of written, deviating agreements, shipment shall be effected without insurance and at the risk and expense of the Buyer. Selection of the transport route and the means of transport shall be at the Supplier's discretion. The risk of accidental perishing or of accidental deterioration of the goods shall be transferred to the Buyer upon surrender of the goods of the delivery to the Buyer, the forwarding agent, the carrier or other company designated for performance of the shipment, at the latest upon the goods leaving the Supplier's plant/warehouse.

(2) To the extent that the shipment of the goods is delayed because the Supplier, as a consequence of whole or partial default of payment of the Buyer, exercises his right of retention, or due to other reasons for which the Buyer is responsible, the risk shall be transferred to the Buyer no later than on the date of notification of readiness for shipment.

(3) Goods which have been reported as ready for shipment must be called up without delay. Otherwise, the Supplier is entitled at his discretion to ship the goods or to store them at the Buyer's expense and risk.

(4) Installation instructions for the delivered goods can be obtained on the Supplier's home page (www.baenninger.de). The Buyer must notify the Supplier if he wishes to have the installation instructions in print form. In this case, the Supplier will provide the installation instructions to the Buyer.

Section 5 Prices and Terms and Conditions of Payment

(1) The Supplier's invoices are due and payable net within 30 days of the invoice date. A cash discount of 3% is granted for payments made within 10 days, to the extent that the Buyer is not in default of payment of receivables. The day the payment is credited to the Supplier's account is definitive. Interest for overdue payment at a rate of 8% above the current base rate will be charged on payments for which the Buyer is in default.

(2) Bills of exchange offered by the Buyer will be accepted by the Supplier only on account of performance and after express agreement and on the condition that said bills can be discounted. Discount fees will be charged as of the due date of the amount of the invoice by the Supplier. For bills of exchange and cheques, the day of their redemption shall be deemed the day of payment.

(3) If the Buyer does not observe the terms and conditions of payment, or if circumstances become known which in the reasonable commercial judgment of the Supplier give rise to justified doubts in the creditworthiness of the Buyer, including any such circumstances already existing at the time of the conclusion of the contract which, however, the Supplier was not aware of or had no cause to be aware of, the Supplier is entitled, without prejudice for further statutory rights, to discontinue further work on pending contracts or to suspend delivery, and to request advance payment or submission of appropriate collateral for outstanding deliveries, and, after the fruitless lapse of a reasonable period for the submission of said collateral – without prejudice for further statutory rights – to cancel the contract. The Buyer is obligated to compensate the Supplier for any and all damage resulting from the non-performance of the contract.

(4) The Buyer may set off any counterclaims against the Supplier only if said counterclaims have been legally and finally determined, are undisputed or have been acknowledged by the Supplier. In addition, the Buyer is entitled to exercise a right of retention only to the extent that his counterclaim results from the same contractual relationship.

(5) If not otherwise indicated in the order confirmation, the Supplier's prices, which are always given in euros, are EXW (ex works/warehouse) plus the currently applicable value-added tax. Prices do not include packaging, freight, postage and insurance. Said expenses shall be billed separately.

(6) In the event of a significant change in cost factors, such as an increase in material procurement costs, wage and ancillary wage costs and energy costs, the Supplier is entitled unilaterally to raise the price if there is a period of four months between the conclusion of the contract with the Buyer and the delivery of the goods.

(7) Inspection certificates according to DIN EN 10204 3.1 B are subject to a fee of € 25,- per unit..

Section 6 Retention of Title

(1) The Supplier retains title of ownership to the delivered goods (hereinafter known as the "purchase item") until any and all of the Supplier's receivables from the business relationship with the Buyer have been settled.

(2) The Buyer shall at his own expense provide insurance cover for the purchase item, in particular for fire and theft.

(3) The Buyer is entitled to sell further the purchase item in the course of ordinary business. Other disposals, in particular assignments or granting of equitable liens, are not permitted.

(4) If, upon further sale, the purchase item is not paid immediately in full by the third-party purchaser, the Buyer is obligated to sell further to the third-party purchaser only subject to retention of title.

(5) The right to further sale of the purchase item expires if the Buyer suspends payment or is in default of payment to the Supplier.

(6) The Buyer hereby assigns in advance to the Supplier any and all claims, including collateral and subsidiary rights, in the amount of the final invoice amount, including VAT, which arise for the Buyer against his customer or third parties from the further sale of the purchase item, independently of whether the purchase item is sold further with or without processing.

(7) In the event of attachments or other intervention by third parties, the Buyer shall notify the Supplier in writing immediately, providing any relevant documents, so that the Supplier can file protective action.

(8) Any processing or transformation of the purchase item shall at all times be performed on behalf of the Supplier. If the purchase item is processed together with other objects which do not belong to the Supplier, the Supplier shall acquire co-ownership in the new object in the ratio of the invoice value of the purchase item to the other processed objects at the time of the processing. Otherwise, the provisions applicable to the purchase item delivered subject to retention of title shall apply to the object resulting from the processing. If the purchase item is inseparably mixed with other objects which do not belong to the Supplier, the Supplier shall acquire co-ownership in the new object in the ratio of the invoice value of the purchase item to the other mixed objects at the time of the mixing. If the mixing occurs in such a manner that the Buyer's object shall be deemed the main object, it shall be deemed as agreed that the Buyer has assigned to the Supplier proportional co-ownership. The Buyer shall keep the resulting sole ownership or co-ownership in safe custody on the Supplier's behalf.

(9) To secure the Supplier's receivables due from the Buyer, the Buyer shall also assign to the Supplier the claims which arise for the former against third parties from the combining of the purchase item with land.

(10) The Supplier promises, at the request of the Buyer, to release collateral to which the former is entitled to the extent that the realizable value of the Supplier's collateral exceeds the amount of the receivables being secured by more than 20%. The selection of the collateral for release is at the discretion of the Supplier.

Section 7 Warranty / Liability

(1) The Buyer undertakes to examine the delivered goods for obvious defects which are detectable without special effort. Obvious defects include, for example, substantial, easily visible damage to the goods. This obligation also covers cases in which a different object or inadequate quantities are delivered. Complaint of obvious defects shall be made to the Supplier no later than two weeks after delivery. Moreover, complaint of obvious defects must be made to the shipping company upon delivery; the Buyer shall request the shipping company to record the defects.

(2) Complaint of defects which do not become apparent until a later date must be submitted to the Supplier no later than two weeks following detection by the user. In the event of the Buyer's failure to fulfil his obligations to examine the goods and submit complaint, the goods shall be deemed as accepted with knowledge of the pertinent defects.

(3) Defects in the delivered object shall be eliminated by the Supplier no later than one year after delivery following appropriate notification by the Buyer. The defects may be eliminated, at the discretion of the Buyer, by subsequent remedy free of charge or by substitute delivery. If substitute delivery is performed, the Buyer is obligated to return the defective object.

(4) If the defect cannot be eliminated within a reasonable period, or if the subsequent remedy or substitute delivery is deemed to have failed for other reasons, the Buyer may, at his discretion, request reduction of the price or cancel the contract. Subsequent remedy shall not be deemed to have failed unless the Supplier has been given adequate opportunity to perform subsequent remedy or substitute delivery without achieving the desired result, or unless the subsequent remedy or substitute performance is refused or delayed unreasonably by the Supplier, unless justified doubt regarding the prospects for success exist, or unless there are other reasons for hardship.

(5) Liability of the Supplier for breach of obligation due to slight negligence is expressly excluded, to the extent that said breach is not related to essential obligations of the contract, to injuries to life, body or health or to guarantees, or affects claims arising from the Product Liability Act. The above provision also applies to breach of obligation by vicarious agents of the Supplier.

(6) Damage compensation claims arising from Supplier's breach of obligations due to slight negligence as well as other contractual claims on the Supplier shall become time-barred one year after delivery of the object. The statutory periods of limitation apply to breach of obligations essential to the contract, damage from injury to life, body or health, further guarantees or claims arising from the Product Liability Act.

(7) Unforeseeable damage which is not typical for the contract is excluded from the liability, to the extent that exclusion circumstances in accordance with Section 7 (5) do not apply.

Section 8 Proper Law, Place of Performance and Jurisdiction

(1) The law governing these terms and conditions of sales and all legal relationships between the Buyer and Supplier is the law of the Federal Republic of Germany, excluding the CISG.

(2) Place of performance is the Supplier's place of business (Reiskirchen).

(3) The courts of Giessen have jurisdiction for legal actions brought in relation to business with merchants, legal persons under public law or public law special funds. The above provision shall also apply with respect to legal actions regarding bills of exchange and cheques. The courts of Giessen shall also be agreed to have jurisdiction for Supplier and Buyer in the event that the Buyer is not subject to general jurisdiction in the Federal Republic of Germany.

Section 9 Return

(1) Cancellations and returns are generally excluded, as far as the Buyer does not possess the right to withdraw. We only accept cancellations of confirmed orders or agree to returns if an exceptional case and/or if a special agreement exists. In case of such an exceptional case, we only accept returns after a registration of returning goods has been applied for. A share of costs of no less than 30% of the value of the goods, or if the value of the goods is below €50.00, a lump-sum charge of €10.00 will be deducted from the amount of the credit note. The goods must be in a resalable condition and in the original packaging (at least packaged in foil).