

General Terms and Conditions of Business

§ 1 General

- (1) All goods, services and offers made by Bette GmbH & Co. KG (Hereinafter known as BETTE) shall be rendered solely on the basis of these General Terms and Conditions of Business. These shall only apply to businessmen, legal entities under public law and public law special assets within the meaning of § 310 Section 1 of the German Civil Code [BGB]. The General Terms and Conditions of Business constitute an integral element of all contracts which BETTE enters into with its contractual partners (Hereinafter known as Buyer) for the goods and services it offers. The General Terms and Conditions of Business shall also apply for all future goods, services and offers, even if they are not expressly agreed again. These terms and conditions shall be regarded as having been accepted by the Buyer when he takes delivery of the goods or services at the latest.
- (2) Any (counter) confirmations by the Buyer making a reference to his own terms and conditions of business or purchase, as well as the incorporation of these of these terms and conditions into the business relationship with BETTE, is hereby expressly rejected. The terms and conditions of business of the Buyer or of a third party shall not apply, even if BETTE does not specifically object to their application in a given case. Even if BETTE refers to a letter containing the terms and conditions of the Buyer or of a third party, or points out such a letter, this shall not constitute any agreement that the terms and conditions of the Buyer or of the third party shall apply. They shall not be accepted even when a contract is handled, in particular even if the goods are supplied by BETTE.
- (3) The requirement for written form agreed in the contract or in accordance with the general terms and conditions of business shall be satisfied if a message is transmitted by fax or EDIFACT. Messages transmitted by e-mail shall also satisfy the requirement.
- (4) All offers submitted by BETTE are subject to change without notice and non-binding, unless they are expressly marked as being binding or include a specific period for acceptance. Statements of acceptance and all orders shall be subject to written confirmation by BETTE to be legally valid.
- (5) The respective written contract including these general terms and conditions of business alone shall apply for the legal relationships between BETTE and the Buyer. This gives an account of all the agreements between the parties to the contract concerning the subject-matter of the contract in full. Verbal promises made by BETTE prior to the the contract being signed are not legally binding. Verbal agreements between the parties to the contract shall be replaced by the written contract, provided that the contract does not expressly state that they shall continue to apply on a binding basis. Supplements and amendments to the agreements made including these terms and conditions of business must be made in writing to be legally valid.
- (6) Information by BETTE on the goods or service to be supplied (E.g. weights, dimensions, consumption figures, capacity, tolerances and technical data) as well as presentations of such information (E.g. in diagrams and drawings) only count as approximations and therefore shall only be binding if this has been expressly agreed in writing. In particular they are not guaranteed characteristics or features, but simply descriptions or designations of the goods or service. Tolerances normal within the trade and tolerances which are the result of statutory regulations or which constitute technical improvements as well as the replacement of components with equivalent components are allowed, provided that they do not have an adverse impact upon the utility of the goods or service for the use envisaged by the contract.

§ 2 Prices

- (1) The prices shall apply for the scope of performance and scope of delivery listed by BETTE in the order confirmations. Additional or special services shall be invoiced separately. Prices quoted are in GBP ex works plus packing as well as plus the rate of value added tax in force at that time. Consignments exported from Germany shall also be subject to customs duty and fees and other public charges.
- (2) Unless stated otherwise, BETTE shall be bound to the prices included in its offers for 30 days from the date of offer. Otherwise it shall be the prices stated in the order confirmation which count.

§ 3 Deliveries, Delivery period, Time limit for performance

- (1) Delivery dates and periods shall only be binding if they have been agreed in writing in an individual instance by BETTE and the Buyer.
- (2) BETTE shall not be responsible for delays in deliveries and performance as a result of force majeure and as a result of events making it significantly more difficult or impossible for BETTE to deliver for more than a temporary period – this includes in particular strike, lock-out, official instructions etc., even if it is BETTE's suppliers which are directly affected by such occurrences –, even if delivery periods and dates have been agreed on a binding basis. They shall entitle BETTE to postpone the delivery and / or performance by the duration of the hindrance plus a reasonable start-up period or to withdraw from all or part of the part of the contract not yet fulfilled.
- (3) If the hindrance lasts for more than three months the Buyer shall be entitled, having set a reasonable subsequent period of time for performance to be rendered, to withdraw from that part of the contract still not fulfilled. If the delivery period is extended or if BETTE is exempted from its obligation, the Buyer may not derive any compensation claims for damages therefrom as a result. BETTE may only rely on the aforementioned circumstances if it has notified the Buyer of them straight away.
- (4) Provided that BETTE is responsible for non-compliance with promised delivery periods and dates, or is in default, the Buyer shall be entitled to compensation for default amounting to no more than 0.5% for each complete week of default, not however, to exceed a total of 5% of the invoiced value of the goods and services affected by the default. Claims over and above this shall not be admitted, unless the default is based upon gross negligence by BETTE as a minimum requirement.
- (5) BETTE shall be entitled to render part deliveries and part performances at any time, unless the part delivery or part-performance is of no interest for the Buyer.
- (6) Compliance with the delivery and performance obligations by BETTE presupposes that the Buyer's obligations have been fulfilled properly and on time.
- (7) If the Buyer is in default with taking delivery of a consignment, BETTE shall consequently be entitled to demand that the losses it sustains are made good by the Buyer. Once the Buyer is in default with taking delivery of a consignment, the risk of accidental deterioration or accidental loss shall pass over to the Buyer.

§ 4 Passing of risk

The risk of accidental loss or accidental deterioration shall pass over to the Buyer as soon as the item to be delivered has been handed over to the person delivering the consignment or has left BETTE's stores for the purposes of dispatch. If the dispatch is delayed at the Buyer's request, risk shall pass over to him once he has been notified that the goods are ready for dispatch.

§ 5 Terms and conditions of payment

- (1) Unless an express written agreement has been made to the contrary, the invoices of BETTE are to be settled in full within 30 days from the presentation of invoice.
- (2) Even if the Buyer's terms and conditions of business are to the contrary, BETTE shall also be entitled to count payments first of all towards the Buyer's older debts. If costs and interest have already been incurred, BETTE shall consequently be entitled to count a payment firstly towards the costs, then towards interest and last of all towards the main performance. BETTE shall notify the Buyer of how money received from him has been allocated.
- (3) A payment shall only be regarded as having been made once BETTE is able to dispose of the amount. In the event that payment is made by means of cheque, the payment shall be regarded as having been made once the cheque has been cashed.
- (4) If the Buyer falls into arrears, BETTE shall consequently be entitled to demand interest from the point in time concerned onwards at 8 percentage points above the base rate. BETTE may prove that the loss it has suffered is greater than base rate plus 8 percentage points.
- (5) If BETTE becomes aware of circumstances calling the creditworthiness of the Buyer into question, in particular if the Buyer fails to honour a cheque or if he stops making his payments, BETTE shall consequently be entitled to make the entire remaining debt payable, even if he has accepted cheques. In this case BETTE shall also be entitled to demand payments in advance or the furnishing of a security.
- (6) The Buyer shall only be entitled to offset, withhold payment, or reduce the purchase price, even if he has notified defects or asserted counter claims, if the counter claims have been declared final and absolute in a court of law or are not disputed. The Buyer shall however also be entitled to withhold payment on account of counter claims based on the same contractual relationship.

§ 6 Reservation of title

BETTE shall be granted the following securities until all its claims (including all outstanding balance claims on current account) to which BETTE, regardless of whichever legal reason on which they are based, is entitled against the Buyer now or in the future. Such securities shall be released as BETTE sees fit, to the extent that the value of the securities exceeds the value of its claims by more than 20% for a sustained period of time.

- (1) The goods shall remain the property of BETTE. Any processing or reforming shall always be for BETTE as manufacturer, without however placing BETTE under any obligation. If BETTE's (co) ownership expires as a result of its goods being combined with other goods, it shall consequently be agreed here and now that the Buyer's (co) ownership of the combined thing shall pass over to BETTE in proportion to the invoiced amount'. The Buyer shall keep the (co) ownership of BETTE in safekeeping free of charge. Goods of which BETTE has (co) ownership, shall be designated in the following as goods subject to reservation of title.
- (2) The Buyer shall be entitled to process and sell the goods subject to reservation of title in proper commercial transactions, for as long as he is not in default. Pledges or the assignment by bill of sale as a security is not allowed. The accounts created from the resale or other legal reason with regard to the goods subject to reservation of title (including all outstanding balance claims on current account) are assigned by the Buyer here and now and in full to BETTE by way of security. BETTE authorises the Buyer irrevocably to collect the accounts assigned to BETTE for BETTE's account in the Buyer's own name. This collection authorisation may only be revoked if the Buyer fails to comply with his payment obligations properly.
- (3) In the event of third party seizure of the goods subject to reservation of title, in particular levy of execution, the Buyer shall point out that BETTE has the title to the goods and notify BETTE of the levy of execution straight away, so that BETTE is able to enforce its ownership rights.
- (4) In the event of the Buyer's conduct being in contravention to the contract – in particular default in payment – BETTE shall be entitled to withdraw from the contract, and to demand the return of the goods subject to reservation of title.

§ 7 Warranty for defects

- (1) In the absence of written agreements to the contrary, BETTE shall supply within the tolerances allowed under the relevant German or European industrial standards, in particular DIN, VDE, EN, ISO or similar. Technical modifications which appear to be necessary as a result of production reasons, product care or legal reasons are allowed and shall not constitute a defect.
 - (2) The items supplied by BETTE are free of quality defects if they correspond to the agreed condition and in the absence of an agreement on condition, they have the characteristics definitively described in technical specification sheets, specifications or drawings by BETTE, or the discrepancies from the agreed or described characteristics are no more than minor. No liability for normal wear and tear is admitted.
 - (3) To safeguard his rights the Buyer shall first of all have to fulfil his obligation to inspect the goods and notify BETTE of defects properly in accordance with § 377 of the German Commercial Code [HGB]. He shall have to inspect the delivered items straight away and notify BETTE of manifest defects in writing within a period of five working days from delivery of the goods by BETTE, and concealed goods likewise within a period of five working days from discovery in writing. Otherwise the goods shall be regarded as having been accepted and claims under warranty will not be accepted. It shall suffice for the notification of defect to have been dispatched on time for it to satisfy the requirement of having been sent on time. The full burden of evidence for all preconditions for a claim to be asserted shall be on the Buyer, in particular for the defect itself. For the point in time at which the defect is noted and for the defect being notified on time.
 - (4) In the event that there are quality defects on the delivered items BETTE shall be obliged and entitled to render subsequent fulfilment within a reasonable period of time after making a choice as to whether to rectify the defect (BETTE is allowed up to two attempts) or to supply a fault-free item. In the event that its attempts to rectify the defect are unsuccessful, i.e. it is impossible, unreasonable to rectify the defect, or BETTE refuses to do so, or BETTE's delay in rendering subsequent fulfilment is unreasonable, the Buyer may withdraw from the contract or reduce the purchase price as appropriate.
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- (5) The warranty shall lapse if the Buyer modifies the delivered item or allows it to be modified by third parties without the consent of BETTE and it becomes impossible or unreasonably difficult to rectify the defect as a result. In each case the Buyer shall have to bear the additional costs of rectifying the defect incurred as a result of the modification.
- (6) The Buyer's warranty claims shall expire in 12 months beginning from the delivery of the item to the Buyer. The statutory periods and regulations on the lapse of the warranty period shall not be affected in so far as the law, e.g. in § 438 Section 1 No 2 of the German Civil Code [BGB], prescribes compulsory longer periods, as well as in the event of an intentional or negligent breach of duty by BETTE, its legal representatives or assistants, in the event of malicious non-disclosure of a defect as well as in the event of loss of life, personal injury and physical harm.
- (7) The regulations for the right of recourse in § 478, § 479 of the German Civil Code [BGB] shall not be affected. The Buyer's right of recourse against BETTE shall only exist however, to the extent that the Buyer has not entered into any agreements with his buyer over and above statutory and compulsory warranty claims.
- (8) Only the Buyer shall be entitled to assert claims under warranty against BETTE. They may only be assigned with the prior written consent of BETTE.
- (9) The Buyer may demand compensation for damages subject to the preconditions specified in § 9, if BETTE is to blame for the defect and the other preconditions, in particular those under in accordance with this provision, have been satisfied.

§ 8 Proprietary rights

- (1) BETTE shall exempt the Buyer and his buyers from claims asserted on the basis of breaches of copyrights, trade marks or patents, unless the draft of a delivered item comes from the Buyer. The exemption by BETTE shall be limited in terms of amount to foreseeable damage.
- (2) An additional precondition for exemption is that the management of legal disputes is handed over to BETTE and that the alleged legal breach is only attributable to the construction or design of the items supplied by BETTE without them being used in combination or together with other products.
- (3) BETTE shall be at liberty to choose the right to exempt itself from the obligations it has assumed in Section 1 by either obtaining the licences necessary for the allegedly breached patent or to provide the Buyer with a modified delivered item or parts for it and thereby eliminating the reproach of breach with regard to the delivered item by replacing the delivered item or part thereof in breach.
- (4) Any compensation claims for damages the Buyer may have shall only exist subject to the preconditions of § 9.

§ 9 Liability

- (1) The liability of BETTE for compensation for damages and reimbursement of expenditure, regardless of whatever legal reasons upon which they are based, in particular as a result of impossibility, the delivery of defective or incorrect goods, breach of contract, breach of duties in contractual negotiations and unlawful acts is limited in accordance with this § 9 in so far as BETTE is to blame.
- (2) BETTE shall be liable for compensation for damages (a) for damage caused by it, as well as its legal representatives and assistants through intent or gross negligence, (b) in accordance with the German Product Liability Act and (c) for damage caused as a result of a loss of life, personal injury and physical harm for which BETTE, its legal representatives or assistants are to blame.
- (3) BETTE shall be liable for ordinary negligence in so far as it, its legal representatives or assistants have breached an important contractual obligation, upon the fulfilment of which the very execution of the contract in a proper manner depends, and upon the compliance of which the Buyer may normally rely. Otherwise no liability will be accepted for ordinary negligence. In so far as BETTE is liable for ordinary negligence on the basis of the aforementioned arrangement, the liability for property damage and pecuniary loss shall be limited to damage typically foreseeable and typical for the contract. No liability is accepted for other indirect and remote consequential damage.
- (4) § 7 (6) shall apply accordingly for statutory limitation.
- (5) § 9 (2) to (4) shall apply accordingly for claims for the reimbursement of expenditure with the exception of those expenditures in § 478 Section 2 of the German Civil Code [BGB] - and other liability claims asserted by the Buyer against BETTE.
- (6) BETTE shall only be liable to pay compensation for damages under any written guarantee if this is expressly accepted in the guarantee. This liability is subject to the restrictions in § 9 (3) in the event of ordinary liability.
- (7) In so far as BETTE provides technical information or acts in an advisory capacity, and this information or advice is not covered by the scope of performance agreed in the contract and owed by BETTE, this shall be free of charge without any liability on the part of BETTE.
- (8) The above liability exclusions and limitations shall apply to the same extent for the executive bodies, legal representatives, employees and other assistants of BETTE.

§ 10 Applicable law, Place of fulfilment, Place of jurisdiction, Partial validity

- (1) These general terms and conditions of business and all the legal relationships between BETTE and the Buyer shall be governed by the law of the Federal Republic of Germany. The provisions of the UN law of sales (CISG) shall not apply.
- (2) The place of fulfilment for all goods and services rendered by BETTE as well as for payments by the Buyer shall be Delbrück. Provided that the Buyer is a registered business, legal entity under public-law or public-law special fund, Delbrück shall be the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.
- (3) Should a provision in these terms and conditions of business or a provision agreed in other agreements be, or become, invalid, the validity of all other provisions or agreements shall not be affected as a result.