



## General Terms and Conditions for Business Customers

**Disclaimer: The following is a non-binding translation of our "Allgemeine Geschäftsbedingungen" furnished to customers for information purposes only. The original German wording shall be binding exclusively in all respects. None of the following shall be relied upon in any dispute.**

### 1. Applicability

These are the general terms & conditions of business (T&Cs) of Bürkle GmbH, Rheinauen 5, 79415 Bad Bellingen. We offer our products and services exclusively to people who act in exercise of their trade, business or profession (an entrepreneur as per § 14 German Civil Code (BGB)). Our products and services are not aimed at consumers. Our T&Cs apply to all orders and concluded contracts regardless of the way the order was placed (e.g. catalogue, online shop).

### 2. Exclusivity clause

All our declarations of intent, agreements and offers are based on our T&Cs; they become part of the content of the contract on placing an order, not responding to our commercial order confirmation or acceptance of delivery. Deviating, conflicting or supplementary general terms & conditions of business even when acknowledged do not comprise a component of the contract unless their validity is expressly agreed in writing.

### 3. Our performance obligation

We would like to always supply you with products which are state of the art. Technical alterations are therefore inevitable. Technical alterations and alterations to the format, colour and weight which do not have a negative effect on the fitness for purpose may reasonably occur.

We are entitled to fulfil the reciprocal obligation in part deliveries as long as this is reasonable.

If our obligations are delayed through unforeseeable hindrances, for example force majeure, industrial action, delivery delays or lack of raw materials or if we do not receive deliveries from our suppliers for reasons for which we are not responsible, then deadlines and time periods to meet obligations will be reasonably extended. In such a case we will immediately inform you of the existence of such hindrances and their likely duration. Both you and we are entitled to withdraw from the contract, as long as it is not a temporary hindrance to the performance of obligations. Any benefits already received are to be immediately returned by both parties.

### 4. Price, shipping and handling charges

The prices stated are in Euros and apply ex works plus VAT within Germany. If you place an order from another member state of the European Union other than Germany you must provide us with your individual VAT number.

If the price of raw materials, energy or other products from our suppliers increases by more than 20% in relation to the goods to be supplied by us between the time at which the contract is concluded and the agreed delivery deadline we are entitled to demand proportionately higher payment due to these price increases.

Avoid the costs of smaller orders. Our first concern is to offer you goods as fast as possible, in the best quality and at favourable prices. The same also applies for smaller orders. The processing of an order incurs costs for any firm, irrespective of the order amount. Our processing costs are covered for orders with a goods value of over 50 EUR (domestic), 100 EUR (EU) and 250 EUR (outside EU). Orders under these values will be subject to a processing charge of 10 EUR (domestic), 20 EUR (EU) and 30 EUR (outside EU) and request your understanding in this matter. Lower your own administration costs and combine many smaller orders together in one order.

Goods weighing up to 31 kg (excluding bulky items) will be sent by parcel service. Packages weighing more than 31 kg, bulky goods or large volumes will be delivered by our carrier. This ensures that your order will arrive with you as soon as possible and cost-effectively. We will charge you costs relating to transport and shipping and our own costs in the invoice for the goods.

Within Germany we charge € 8.40 postal costs plus VAT per package up to 31 kg. Please also read about delivery charges in the "Shipping and payment" section at [www.buerkle.de](http://www.buerkle.de).

## **5. Payment, default, offsetting and right of retention**

You can expect punctual delivery from us. If payment is made in due time within 10 days a 2% discount is allowable, from the 11th day until 30 days without discount, calculated respectively from the invoice date. We reserve the right to pass on data given to us in your order to credit agencies in order to determine your credit-worthiness and if necessary to require prepayment or cash on delivery. Our delivery obligation is suspended if the purchaser has not made a payment which has fallen due. With part deliveries we are entitled to issue partial invoices. If several outstanding amounts (including principle and incidental debts) are not yet paid it is decisively agreed that the order redemption of incoming payments is to be the order as per §§ 366 para. 2, 367 para. 1 German Civil Code. Offsetting is only permissible when your counterclaim is uncontested or has been legally established. You may also only exercise your right of retention in as far as the counterclaim on which the right to refuse performance is based is uncontested or legally established.

## **6. Return consignments**

We guarantee we will exchange goods or provide a credit note for undamaged goods returned to us at your own cost, within 14 days and in their original packaging, if you notify us in advance of the return. We however reserve the right to charge a proportion of the returns processing fee.

## **7. Place of performance, passing of risk**

We fulfil our contractual obligations at the place of our registered office, Bad Bellingen (place of fulfillment). The risk of accidental loss and accidental deterioration of the

goods transfers to the buyer on dispatch of the items to the carrier, the shipper or the person carrying out the delivery.

### **8. Warranty for defects**

§ 377 German Commercial Code (HGB) applies to notifications of defects made by you whereupon the notification period for obvious defects is 10 days after delivery and 10 days after discovery for hidden defects. In addition notifications of defects must be filed in writing. In the case of a defect in the object of purchase, we will decide freely after due assessment of the circumstances, whether we will grant the buyer supplementary performance through remedying the defect or delivery of non-defective goods.

### **9. Indemnity**

We are liable for damages due to a deliberate or grossly negligent breach of our duty by one of our legal representatives or vicarious agents. Any liability due to a grossly negligent breach of our duty by a vicarious agent who is not a senior member of staff is limited to compensation for foreseeable damages.

We are further liable for damages for death, injury to body or health caused by deliberate or negligent breach of our duty by one of our legal representatives or vicarious agents.

In addition liability for damages caused by ordinary negligent breach of a duty or ordinary negligent unlawful act by one of our legal representatives or vicarious agents is excluded unless important duties are breached to which adherence is required to fulfil the purpose of the contract or occurs as a result of laying claim to a high degree of trust. Our liability in these cases is limited to compensation for foreseeable damages.

Liability under the German Product Liability Act (Produkthaftungsgesetz), liability for the acceptance of a guarantee for the quality of an item, liability for procurement risk and liability arising from the fraudulent concealment of a defect is not affected.

We are not liable vis-a-vis our customers for damages which can be claimed by a third party vis-a-vis our customer under foreign law and whose enforcement is apparently irreconcilable with fundamental principles of German Law (ordre public). This applies in particular to claims for "punitive damages".

### **10. Limitation period**

A possible contractual claim for defects is limited to one year from delivery of the item unless the claim is based on a deliberate or grossly negligent breach of duty, the acceptance of a guarantee for the quality of an item, the fraudulent concealment of a defect or deals with damages for death, injury to body or health.

### **11. Retention of title**

We will retain ownership of goods supplied by us (hereafter: goods subject to retention of title) until all obligations existing from our whole business relationship when the contract was concluded (including claims resulting from this contract) have been fulfilled.

Goods subject to retention of title must be treated with care and the customer must carry out any maintenance work or inspection necessary on his own account.

Furthermore the goods subject to retention of title must also be adequately insured, if their insurance is customary. We must be informed of any change in ownership immediately. The customer must inform us immediately in writing of any orders of attachment or other actions affecting the goods subject to retention of title. Any costs arising from legal proceedings according to § 771 German Civil Code (BGB) are to be borne by the customer.

Processing and manufacture of the goods subject to retention of title by the customer is always carried out in our name and on our behalf. The expectant rights of the customer in the object of purchase are transferred to the new goods. If processing or manufacturing is carried out using items which are not our property then we acquire co-ownership of the new goods in the ratio of the value of the goods subject to retention of title to that of the other manufactured items.

The customer may only sell the goods subject to retention of title in the normal course of business dealings insofar as there is no prohibition of assignment through the sale of the preemptive claim and provided that they are not in default. The same applies to the sale of goods in which we have acquired rights of ownership according to legal regulations (relations, etc.) or in accordance with this contract.

Claims arising from the sale of the goods subject to retention of title are assigned to us (in the amount stated on the invoice). If the claims arising from the further sales are placed in a current account then the assignment refers to the closing balance. We accept the assignment.

If the goods subject to retention of title are sold on by the customer together with other goods not supplied by us then the claims from the further sales are assigned to us in the ratio of the invoice value of the goods supplied by us to the invoice value of the other goods. If the claims arising from the further sales are placed in a current account then the assignment refers to the closing balance. We accept the assignment.

After the assignment the customer remains authorised to recover the debt. However, we reserve the right to recover the debt ourselves, as soon as the customer no longer fulfills their obligation to make due and proper payment and defaults on payment.

If the customer is entitled to payment for the use of the goods subject to retention of title by third parties (e.g. a contractual claim) then the customer assigns this claim to us in the amount of the secured debt as per para. 1. 1. We accept the assignment.

Should the customer behave in violation of the contract, particularly by defaulting on payment, we are entitled to withdraw from the contract and demand the return of the goods subject to retention of title (§ 449 para. 2 German Civil Code (BGB)). 2 BGB).

## **12. German text of the contract decisive, applicable law and jurisdiction**

For all disputes the German text of these T&Cs is decisive. The law of the Federal Republic of Germany applies exclusively. For all disputes arising from this contract the competent German court (AG Freiburg, LG Freiburg etc.) for the place of Bürkle GmbH's registered office is agreed as having jurisdiction.

## **13. Collection, processing and use of data**

In order to meet the demands placed on efficient organisations today personal and company related data of our customers is collected, processed and used. The collection,



processing and usage of this data will only occur if you voluntarily give us your data and to allow third parties to carry out a credit check before the conclusion of the contract (in particular for first orders), to process existing contracts and to maintain customer relationships. In doing so we always adhere to the applicable data protection regulations. You may object in writing to the usage of your data for our own marketing purposes. Please see our Data Protection Declaration at [www.buerkle.de](http://www.buerkle.de) for more information about data protection.