

# General terms and conditions for deliveries and services

## Blau-Metall, Inh. Thomas Blau – June 2019

### § 1 General provisions, Scope

1.1 These general terms and conditions for deliveries and services ("terms and conditions" henceforth) apply to all offers, services, contracts and deliveries of Blau-Metall, Inh. Thomas Blau, Am Morgenberg 1a, 07819 Triptis, Germany ("we, us"). With placement of the order or at the latest upon receipt of the products, the buyer acknowledges these general terms and conditions for sales and delivery.

1.2 These terms and conditions are deemed to be a framework agreement also for future contracts for the sale and/or delivery of movable property with the same buyer, without us having to refer to them in each individual case.

1.3 Delivery is made and services are carried out by Blau-Metall only on the basis of the following terms and conditions, if the parties do not agree otherwise in writing. Any and all terms and conditions – including those of the contract partner – if not explicitly accepted by Blau-Metall in writing - are not binding for Blau-Metall, even if Blau-Metall does not expressly reject them.

1.4 Our terms and conditions are applicable only to an entrepreneur, a legal entity under public law or a special fund under public law in accordance with § 310 (1) (1) BGB (henceforth referred to as "customer" or "buyer").

1.5 In the event any provision of these terms and conditions shall be held to be entirely or partially invalid, the validity of all remaining provisions of the general terms and conditions for sales and deliveries and the general terms and conditions of sales and deliveries as such shall remain unaltered in force.

### § 2 Contract basis, conclusion of contract

2.1 The ordering of deliveries or services by the customer is considered a binding contract offer. The acceptance of this offer is confirmed by a written order confirmation, unless the buyer has accepted a binding offer made by Blau-Metall.

2.2 Decisive for the legal relationship between Blau-Metall and the customer, in particular for the scope and the obligation to provide deliveries and services, are the written order confirmations including these general terms and conditions for deliveries and services. If the buyer has accepted an offer made by Blau-Metall, this offer, including these general terms and conditions for deliveries and services, is considered final and legally binding.

2.3 Already in the offer stage, the buyer is required to point out any potential use of Blau-Metall products which is beyond the scope of the contract, for applications of a special kind as well as to increased risks, which can arise with the use of our deliveries and services by the buyer.

2.4 References to the validity of statutory provisions are only for clarification. Even without such clarification, the statutory provisions therefore apply unless otherwise agreed in these general terms and conditions.

2.5 The written-form requirement referenced in these terms and conditions is deemed complied with through the telecommunication of documents via fax, computer fax or e-mail.

### § 3 Preparatory work, Lithographic prints, Documents

If, in connection with the preparation of a contract, we have provided the customer with drawings or documents of any kind, these remain our property for the duration of and beyond the conclusion of the contract. As far as copyright potential exists, Blau-Metall reserves the copyright to these objects. They must not be made available to third parties by the customer without express permission.

### § 4 Tools & usage rights

4.1 All operating objects used by Blau-Metall for the manufacture of deliveries – including custom-produced items, remain our sole property, even if their costs are calculated on a pro-rated basis. These tools are not delivered to the customer.

4.2 The customer is obligated to make no attempt to remove manufacturer information from the deliveries or associated documents without our prior express consent.

### § 5 Prices, payment terms, due date

5.1 The stated final prices include - unless otherwise noted - packaging, freight charges, shipping insurance and export customs (if applicable). Packaging, freight charges, insurance and export customs are shown separately and do not apply when picked up ex warehouse. All prices are, unless expressly agreed otherwise, in the currency of EURO plus the respective statutory value-added tax (VAT).

5.2 Import customs procedures and payment in the destination country are to be handled by the customer or a separate importing party assigned by the customer.

5.3 Compliance with agreed prices for deliveries and services presupposes that the items on which the agreement is based remain unchanged and can be provided without hindrances for which the buyer is responsible. Subsequent additions and changes that lead to additional expenses shall be borne by the customer in addition.

5.4 Blau-Metall is entitled to increase prices for deliveries and services if advance deliveries have become more expensive, agreed wages have changed or other costs have increased without Blau-Metall being able to avoid this or without Blau-Metall being able to change this through reasonable measures.

5.5 Payments have to be made according to the agreed payment conditions. Unless otherwise agreed, our invoices are due to be paid according to the date of invoice and the payment has to be made without deductions within 30 of that specified invoice date. Agreed payment terms are upheld only if the amount to be paid is available to us unconditionally on the due date. Payments are deemed to have been made at the time in which they are received in our business account.

5.6 Checks and bills of exchange are only valid as payment after redemption. Charges and/or other costs associated with the submission of the check or bill of exchange shall be carried by the customer.

### § 6 Default of payment, Offsetting, Right to refuse performance

6.1 In case of default of payment, Blau-Metall is entitled to charge interest at the rate of 9% points above the respective base interest rate plus a one-time default fee of €40.00. The assertion of further damages is not excluded. For merchants, our claim to the commercial maturity interest (§ 353 HGB) remains unaffected.

6.2 The customer has the right to withhold payments or offset them with counterclaims only in the case of indisputable counterclaims or such that are pending legal decision (undeniable for logical reasons) or legally binding. Complaints which have not been integrally closed are no cause for a delay in payment.

6.3 The customer may assign claims against Blau-Metall to third parties or have them collected by third parties only with our prior written consent, unless these are claims that are undisputed, pending legal decision or legally binding. § 354a HGB shall remain in force.

### § 7 Delivery, Place of fulfilment, Transfer of risk & Packaging

7.1 Delivery is ex warehouse, Am Morgenberg 1a, 07819 Triptis, Germany – which is also the place of fulfillment. At the request of the customer, goods will be sent to another destination, in which case the ADSp (German Freight Forwarders' Standard Terms and Conditions) in their respective version shall apply concurrently with these terms and conditions. Unless otherwise agreed, Blau-Metall is entitled to determine the type of shipment with regards to Transport Company, shipping route and packaging.

7.2 Transport packaging and all other packaging items are considered one-way packaging and become property of the customer with the exception of Euro-Pallets which are our property, as well as packaging that is specifically identified as our property.

7.3 All risks of accidental loss and accidental deterioration of goods pass to the customer at the latest with the transfer of goods from Blau-Metall to the customer. Insofar as acceptance has been agreed upon, this is final for the transfer of all risk. Additionally, the statutory provisions of service contract law apply accordingly to an agreed acceptance. In the case of a consignment purchase, the risk of accidental loss or accidental deterioration of the goods, as well as the risk of delay, shall pass to the shipment provider / forwarding company at the point the goods are handed over.

7.4 In case the shipment is delayed as a result of a circumstance for which the customer or a third party acting on behalf of the customer is responsible, the risk passes to the customer from the date on which we are ready to ship and have communicated this to the customer.

### § 8 Delivery deadlines and dates

8.1 Agreed deadlines and delivery dates for goods or services shall not commence until the customer has completed all preparatory acts required by it and fulfilled its duty to cooperate. If the customer is in delay with performance to be provided by it, the deadlines and dates shall be extended by the duration of this delay. Deadlines and dates are only valid if they are bindingly stated or confirmed by us in written form.

8.2 The delivery deadline is considered met if we have offered the goods or services to the customer within the deadline or have asked the customer to pick up the goods within that deadline. In case of a consignment purchase, the delivery deadline is considered met if we have handed the goods over to the shipment provider / forwarding company within the delivery deadline. For the

event a delivery or handover is delayed as a result of circumstances for which the customer is responsible, the delivery deadline is also considered met if we have notified the customer of readiness for shipment within the agreed delivery deadline.

8.3 If the non-observance of deadlines for the delivery of goods or services is due to the occurrence of unforeseeable hindrances of temporary duration, which are beyond our control and for which we are not responsible, the deadlines and dates shall be extended by the duration of the hindrance or interruption plus a reasonable start-up period. This shall be applicable in cases of force majeure, strikes, lockouts, official orders, even if such circumstances occur at our suppliers and subcontractors, insofar as the hindrances demonstrably have a considerable influence on the execution of the deliveries and services to be provided by Blau-Metall. We shall inform the customer of non-compliance with the deadline or the dates without delay and at the same time notify the expected new delivery date. The statutory rights of withdrawal and termination on the part of the customer remain unaffected by this clause.

8.4 Should Blau-Metall nevertheless fall behind the agreed schedule, the customer must grant a reasonable period of grace which, as a rule, amounts to at least three weeks. As long as this period has not expired unsuccessfully or was dispensable for other statutory reasons, the customer cannot secure a replacement and cannot withdraw from the contract.

8.5 If the customer incurs any damages as a direct result of debt owed by us, it is entitled to claim compensation. In case of slight negligence, this compensation shall amount to 0.5% for each week of exceeding the deadline, but to more than 5% in total of the net amount of the delivery which has not been delivered on time. Without prejudice to § 11 of these terms and conditions, any further claims for damages due to delays in case of slight negligence are excluded.

8.6 If the customer is in default of acceptance, fails to cooperate or if delivery is otherwise delayed due to reasons for which the customer is responsible, Blau-Metall shall be entitled to compensation for any resulting damages including additional storage costs. As a rule, Blau-Metall charges a compensation of 0.5% of the total net invoice amount per month, starting at the delivery deadline or with the notification of readiness for shipment. It is the responsibility of the customer to prove that we have incurred no damage at all or only a significantly lesser amount than the aforementioned compensation when challenging any compensation claims made by us.

#### **§ 9 Retention of title**

9.1 Blau-Metall reserves full ownership of the delivered or manufactured goods until full payment of all our present and future claims arising from the contract.

9.2 In case of a breach of contract by the customer, particularly a failure to pay the full purchase price, Blau-Metall is entitled to withdraw from the contract according to the statutory provisions and to demand the goods on the basis of the retention of title and withdrawal. If the customer fails to pay the due amount, Blau-Metall may only assert these rights if we have unsuccessfully set a reasonable extension for payment to the customer or if such an extension is dispensable according to statutory provisions.

9.3 The customer is entitled to further process or re-sell the goods, which are subject to retention of title by Blau-Metall, in the normal course of business; provided, however, that pledging or protective conveyance of the goods may only be made upon prior written approval from us. A resale may only be made under retention of title, unless it takes place against immediate cash payment of the customer. Other dispositions, in particular pledging or transfer by way of security, are not permitted.

9.4 By processing, mixing or reconstructing reserved goods with other products, that are not our property, we gain shared ownership of the resultant product in proportion of the monetary value of the joint product and other component products at the time of processing. It is the duty of the buyer to store and control the resultant product with appropriate care.

9.5 The customer hereby assigns to us now, in the event of re-sale, all debts, including all ancillary rights and collateral security, accruing to it in respect of its buyers from the resale of the purchased goods, and we hereby accept the assignment. The customer, upon demand, shall disclose to us the names and addresses of its buyers as well as the accounts receivable and amounts due resulting from such sales. Unless revoked by us and without prejudice to our sole title in the assigned receivables, the customer may collect the receivables assigned to us in its own name, but for our account.

9.6 The customer is prohibited from making agreements with its buyer or a third party, which may in any way exclude or impair our rights. This applies in particular to agreements that negate or affect advance assignments. In the case of seizure or other interventions by third parties, the customer must notify us immediately, handing over the documents necessary for an intervention.

#### **§ 10 Complaints and claims for defects**

10.1 If there is a mutual commercial transaction, any claims made by the customer for defects presuppose that the customer has fulfilled its statutory

inspection and complaint obligations according to § 377 & 381 HGB. Should the customer fail to properly inspect and/or report a defect, our liability for the non-indicated defect is excluded. The same standard applies if delivery is made to a third party designated by the customer. In such a case, it is the customer's responsibility that the delivery is inspected immediately upon receipt by the respective third party and a timely report of the defect is provided. Otherwise, the delivery is considered to be in accordance with the contract.

10.2 Claims for defects are contingent on the factual accuracy, completeness and timely delivery of the information provided to us for the execution of our deliveries and services as well as proper use of the product by the buyer. We are not liable for any defects resulting from data submitted by the customer or otherwise incomplete or incorrect information.

10.3 In case of a justified notification of defects, Blau-Metall will render supplementary performance at our own discretion, either by replacement delivery, subsequent improvement or new production of the product(s) in question. The customer must afford us a period of at least 14 days to provide supplementary performance, beginning at the notification of defects. Should we fail to remedy the defect within a reasonable period or if we fail to do so altogether, the customer has the right to demand a reduction of the remuneration or to withdraw from the contract in the event of a not insignificant breach of duty on our part. If only parts of a delivery are found defective, the rights of the customer are limited to the defective parts only, unless the partial delivery is of no interest to the customer. Blau-Metall is entitled to make the supplementary performance owed dependent on the customer paying the due purchase price according to the agreed timeline. However, the customer is entitled to retain part of the purchase price which is reasonable in relation to the defective component(s). Claims by the customer for damages or reimbursement of futile expenses exist only in accordance with §11 of these terms and conditions and are otherwise fully excluded.

10.4 Blau-Metall is not liable, if defects are due to improper execution of our processing / handling instructions or if the goods are improperly assembled, improperly put into operation by the customer or a third party, improperly operated or if changes were made without coordination with the manufacturer.

#### **§ 11 Liability & Limitation of claims**

11.1 Unless otherwise noted in these terms and conditions, including the following provisions, Blau-Metall shall be held liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory regulations.

11.2 Blau-Metall is only liable subject to mandatory law, currently for act of gross negligence and intent. Other claims of whatever nature, under whatever title, in particular, claims for compensation of indirect damage or consequential damages, lost profit or several losses, which arise by the customer or a third party are expressly excluded. In cases the customer is claimed by third parties, the customer will hold us harmless against these claims.

11.3 The liability limitations from § 11.2 shall not apply if we fraudulently conceal a defect or have assumed a guarantee for the quality of the goods. The same applies to claims of the customer according to production liability law.

11.4 For materials that are supplied to us by the customer or its suppliers for re-certification purposes, we assume no responsibility for their workability. We are not liable for damages resulting from the inadequate quality of this material, but only for damages in the context of work conducted within the contract.

11.5 Unless otherwise agreed, the limitation period for claims by the customer amounts to one year from delivery or service. For damage claims according to § 11.2 and § 11.3, the statutory limitation periods apply. These limitation periods are also applicable in the case of claims according to § 438 (1) (2) BGB and § 634a (1) (2) BGB. The limitation period in case of delivery recourse according to §§ 478, 479 BGB and § 445b (1) BGB remains unaffected.

#### **§ 12 Place of performance, jurisdiction, applicable law**

12.1 The place of performance for all deliveries and services of the contracting parties is our place of business.

12.2 The jurisdiction is our place of business, if the customer is a merchant within the meaning of the Commercial Code, a legal entity under public law or a special fund under public law.

12.3 The law of the Federal Republic of Germany applies. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded.

#### **§ 13 Salvatorius Clause**

13.1 In the event that one of the provisions should, for whatever reason, be void or invalid, this shall not affect the validity of the other provisions.

13.2 The contracting parties undertake to replace the invalid regulation with a valid one which comes closest to the economic intent of the invalid regulation.