



## General Terms and Conditions batimet USA Inc.

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## **General Supply and Payment Conditions, 08.04.2020**

### **1. Contractual conditions, applicable law**

- a) Our contracts are determined by our written order confirmations and these General Supply and Payment Conditions. Any deviating conditions or agreements and oral agreements must be approved by us in writing.
- b) All of our legal relationships are governed by the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.

### **2. Quotations, prices, payments, securities**

- a) The quotations provided by us are not binding. All taxes, import taxes and other levies and dues arising in the destination country for our goods and services shall be paid by the purchaser. Unless otherwise agreed, the prices and conditions in the price list valid on conclusion of the contract shall apply.
- b) Payment shall be made net in cash within 30 days after the date of invoice. Compliance with the payment deadlines shall be determined by the date on which the payment is received. Non-cash payment will be accepted on account of performance; the purchaser shall pay costs and fees. We only accept bills of exchange by special written agreement. We can determine which of our accounts receivable shall be covered by incoming payments.
- c) If the target payment date is passed, we shall charge interest at the rate of 9% above the basic interest rate. This shall not affect the right to claim any other default damages.
- d) Offsetting and retention are only permitted if the purchaser's counterclaim has been legally determined or is undisputed. A counter-suit is possible at any time.
- e) If the execution of the contract is at risk because of the purchaser's inability to pay, which also exists if credit limit of a trade credit insurance is cancelled, we can refuse to provide the service incumbent on us and, in addition, revoke all payment targets granted and demand prepayment by way of security. In addition, we also have the right to withdraw from the contract.
- f) If the purchaser falls behind with payment or if it does not honour a bill of exchange upon falling due, we are entitled to take back the goods and to enter the purchaser's company for this. We can, moreover, forbid the onward sale, further processing and removal of the goods supplied.
- g) batimet is entitled to demand up to 100% of the probable invoice amounts as an advance payment. In deviation from 2 b), this amount is due immediately net in cash. In this case, the non-binding delivery dates given by batimet in the order confirmation shall be postponed to the time from which the customer has settled the advance payment in full.
- h) In so far as the customer ordered from batimet and returns the goods supplied by the latter, it shall receive from batimet for the returned goods a credit in the sum of 75% of the value of the goods in so far as these are goods that can be sold on by batimet. This shall not apply in the event of individual one-off manufacture.

### **3. Risk, delivery, commerce clauses, transport racks**

- a) The risk shall pass to the purchaser upon handover of the goods to the shipper or freight carrier, but not later than the departure of the goods from the warehouse or supplier factory. This also applies for "carriage free" delivery.
- b) The purchaser cannot reject partial deliveries. If goods are transported, we determine the shipper, freight carrier and transport route.
- c) INCOTERMS 2010 apply for all commerce clauses.

- d) Some of our goods are delivered on special transport racks. The purchaser must deal with the transport racks as instructed by us. If there is any time delay in the return of the transport racks, or if they are damaged or lost, we are entitled to charge the corresponding costs to the purchaser.

#### **4. Time of delivery, prevention of delivery, delay**

- a) Delivery deadlines and dates are only given as the approximate delivery time from the factory or warehouse and are not fixed dates. In the event that advanced payment in accordance with Point 2 g) of these Conditions is requested, the non-binding delivery period shall be extended and shall start with the date on which the advanced payment is paid in full by the customer.
- b) Our delivery obligation is subject to the condition of correct self-delivery on time, unless the incorrect or late delivery or non-delivery is our fault. A bindingly agreed delivery period shall be extended by at least 2 weeks if delivery is not made to us on time.
- c) Preventions of delivery due to force majeure which are not our fault shall entitle us to postpone the delivery by the duration of the prevention and to the extent of its effects. Force majeure includes operational disruption, loss of production, procurement difficulties, industrial disputes and other circumstances which make delivery considerably more difficult for us. If the manufacture or delivery of goods is prevented for more than 6 months, we may withdraw from the contract.
- d) Default on our part shall only occur if, after the due date, for reasons for which we are to blame, we fail to render due performance within a reasonable extension period upon written reminder by the purchaser. Furthermore, the precondition is that the purchaser is not itself in default with an obligation under the business relationship, especially its payment obligation. If the last approved specification by the purchaser is less than 30 days before the agreed delivery date, the agreed delivery date shall be postponed accordingly by this time margin.

#### **5. Weight, number of items, dimensions, deviations**

- a) Deviations in weight, number of items or specification of the supplied goods from our information in the delivery slip and invoice must be proved by the purchaser.
- b) Depending on the nature of the manufactured items, deliveries that are over or under the agreed weights or number of items shall be permitted up to 10%. The DIN tolerances or EN tolerances, or else the deviations normally permitted in the trade, shall apply for the prescribed dimensions. References to standards, material sheets, factory test certificates etc. are not a guarantee of the nature of the goods.

#### **6. Retention of ownership**

- a) The goods shall remain our property until the purchaser has finally fulfilled all present and future claims under the business relationship. The purchaser shall keep our goods safe free of charge.
- b) If our goods are processed by the purchaser, we shall be considered the manufacturer without any obligation arising from this for us, and shall acquire ownership of the newly produced goods. If the goods are processed with other materials, we shall acquire shared ownership in the proportion of the invoice value of our goods in relation to that of the other materials. If our goods are combined or mixed with an item of the purchaser such that the purchaser's item is considered the main item, the shared ownership of the item shall pass to us in the proportion of the invoice value of our goods in relation to the invoice value, or failing this, the transaction value, of the main item. In such cases, the purchaser shall be considered the custodian.
- c) The purchaser here and now assigns to us as security all claims from the sale of goods in which we hold the ownership rights in the extent of our proportion of ownership of the sold goods.

- d) The purchaser shall be entitled to dispose of the goods in our ownership in the ordinary course of business and to collect the assigned claims as long as it meets its obligations in due time from the business relationship with us - especially the terms of payment - and a danger to our reservation of ownership rights seems impossible. Otherwise, we shall be entitled to demand the surrender of the goods in our ownership at the cost of the purchaser. The purchaser here and now agrees to our entering the site and building where the goods are located in order to take stock and take possession.

In addition, we are entitled to revoke the right of debt collection. We can require the purchaser to inform us about the goods in our ownership and the debts assigned to us and their debtors, to provide all information necessary for collection, to supply all relevant documents and disclose the assignment to its debtor.

- e) If the value of the securities exceeds our claims by more than 20%, we shall release securities of our choice to this extent at the purchaser's request.

## **7. Defects claims**

- a) The goods must be examined immediately. Material defects, incorrect deliveries and missing quantities, in so far as these can be determined through reasonable examination, must be notified to us in writing immediately, but no later than 7 days after the receipt of the goods. If a defect that could not be detected in the initial examination is found later, notice must be given in writing of this as soon as it is discovered, with immediate suspension of any working or processing. Sect. 377 HGB [Commercial Code] shall apply, which here takes precedence over the rules of the BGB [Federal Civil Code]. If the orderer works on or processes the goods, we may assume that the item is suitable for the use of the orderer.
- b) If the orderer does not give notice immediately, the goods are considered accepted with regard to defects. The same applies if the orderer does not allow us to carry out an expert inspection of the defect immediately on our request.
- c) With the notice of defect, the orderer must at the same time state irrevocably whether it wishes a repair of the defect or the delivery of an item without defect for the purpose of subsequent performance. If complaints are justified, we will, as the orderer chooses, repair the defect free of charge or supply a replacement carriage-free to the original destination point in return for the faulty product weight for weight or take back the goods with reimbursement of payments already made. If the chosen form of subsequent performance is only possible with disproportionately high costs, we shall automatically undertake a different form of subsequent performance.
- d) If the repair or replacement delivery fails twice, the orderer may enforce its right of withdrawal or demand a reduction in the purchase price. Any deadline previously set by the orderer to fulfil the contract shall only start to run at this point in time.
- e) The orderer cannot derive from defective part-deliveries any rights regarding the remaining part-deliveries.
- f) If the purchaser uses parts extraneous to the system, the purchaser shall be obliged, in the event of any damages, to prove that the damage would also have occurred if system components had been used. Otherwise, the purchaser's defects claims and claims to compensation shall lapse in this respect.
- g) The purchaser is strongly recommended to examine the profiles and accessory parts closely before installation. Any liability is limited to the amount of the goods value of the profiles and accessories. This shall apply in particular for costs and damages incurred in the event of any necessary replacement upon removal and re-installation if applicable. Furthermore, this shall also apply for material damages under Sections 823 et seq BGB and warranty claims further to material and construction errors, instruction errors, working and installation errors and indirect damages. Statutory rights shall not be affected.

**8. Technical advice, guarantee**

- a) We provide technical advice to the best of our knowledge and ability. However, it is non-binding and does not release the orderer from the need to carry out its own inspections and tests. The orderer shall be responsible for compliance with statutory and authority regulations when using our goods.
- b) The parameters and information specified in catalogues, brochures and orders concerning the scope of delivery, dimensions, weights, materials, appearance and performance are intended to describe the object of the delivery and do not represent any guarantee of characteristics or durability. Guarantee declarations must be given expressly and in writing in order to be legally valid. If, at the time of transfer of risk, the product is lacking in any such guaranteed characteristic, we shall, as the orderer chooses, repair the defect free of charge or supply a replacement carriage-free to the original destination point in return for this product or take back the goods with reimbursement of payments already made.

**9. General liability limitation**

- a) Unless there are any mandatory statutory provisions to the contrary, we recognise direct and indirect damage compensation claims of any type with the exception of personal injury only in the event of our own deliberate intent or gross negligence and only in the extent of the cover and performance of our own liability insurance. If remaining damages compensation claims are not covered by this insurance, such as those arising from delay or impossibility, our liability is limited to an amount corresponding to five times the price of the faulty delivery or performance.
- b) The orderer is obliged to make every effort immediately after the discovery of a defect to ensure that further damage is avoided at all costs. When submitting the defect notification, the orderer must put a figure on the damages sum expected by it. Immediately after the occurrence of circumstances which could lead to the amount of damages reaching or exceeding five times the value of the delivery or performance in question, the orderer shall point this out to us in writing; the same shall apply for circumstances occurring later which could influence the amount of the damages. If the orderer fails to point this out, we are not obliged to pay any pecuniary damages above this amount.

**10. Statute of limitation**

In cases in which the customer is not the user, all defects claims and claims for damages compensation shall lapse one year after the supply or performance, or if a longer limitation period is agreed for defects claims, with the expiry thereof.

**11. Third-party property rights, right to tools**

- a) If, in the cases of goods supplied on the basis of drawings or other information provided by the purchaser, the property rights of third parties are violated, the purchaser shall hold us free from all claims.
- b) The purchaser shall not acquire any rights to the tools as a result of the complete or partial payment of the tool costs.

**12. Place of performance, place of jurisdiction, other**

- a) Unless otherwise agreed, the place of performance for our goods supplied “ex factory” shall be the supplier factory, and for other goods supplied, our warehouse.
- b) The place of jurisdiction is Dresden.
- c) The law of the Federal Republic of Germany shall apply exclusively. The application of the Vienna UN Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.
- d) The company batimet GmbH will not participate in any dispute resolution procedure before a consumer arbitration office as defined in the VSBG [Consumers’ Dispute Resolution Act], nor is it obliged to do so.
- e) If any provision of these General Supply Conditions is or becomes invalid, this shall not affect the validity of the remaining provisions. These General Supply and Payment Conditions come into force in April 2020 and replace all previous General Supply and Payment Conditions.

# **batimet**

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