

## General Terms and Conditions (GTC) of the Company F.W.Barth & Co. GmbH

### § 1 Scope, Form

(1) These General Terms and Conditions (GTC) apply to all of our business relationships with our customers ("Purchasers"). The GTC shall only apply if the Purchaser is an entrepreneur (Section 14 of the BGB (German Civil Code)), a legal entity under public law or a special fund under public law.

(2) The GTC shall apply in particular to contracts for the sale and/or delivery of movable items ("goods"), irrespective of whether we manufacture the goods ourselves or purchase them from external suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the GTC in the version valid at the time of the Purchaser's order or, at all events, in the version most recently communicated to it in text form, shall also apply as a framework agreement for similar future contracts, without our having to refer to them again in each individual case.

(3) Our GTC shall apply exclusively. Any deviating, conflicting or supplementary General Terms and Conditions of Business of the Purchaser shall only become part of the contract if and insofar as we have expressly agreed to their validity. This consent requirement shall apply in all cases, for example even if we carry out the delivery to the Purchaser without reservation although we are aware of the Purchaser's General Terms and Conditions.

(4) Individual agreements concluded in specific cases with the Purchaser (including subsidiary agreements, supplements and amendments) shall take precedence over these GTC in all cases. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the contents of such agreements.

(5) Legally relevant declarations and notifications of the Purchaser with regard to the contract (e.g. the setting of a deadline, notice of defects, withdrawal or a price reduction) must be submitted in writing, i.e. in written or text form (e.g. a letter, email, fax). Statutory formal requirements and further forms of documentary evidence, particularly in cases of doubt about the legitimacy of the declarant, shall remain unaffected.

(6) References to the applicability of statutory provisions shall be for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

### § 2 Conclusion of the Contract (Offer and Acceptance)

(1) Our offers are subject to confirmation and non-binding. This also applies if we have provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve ownership rights and copyrights. Quantities are always subject to the "approximation clause". We are entitled to carry out deliveries with a difference of up to 10% more or less and to invoice them accordingly.

(2) The ordering of the goods by the Purchaser (Purchaser's offer) is considered to be a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 14 days of its receipt by us.

(3) Acceptance can be declared by us either in writing (e.g. by written order confirmation) or in text form (e.g. by e-mail) or by delivering the goods to the Purchaser.

### § 3 Delivery Period and Delay in Delivery

(1) The delivery period is agreed individually or is stated by us when the order is accepted. If this is not the case, the delivery period shall be approx. eight weeks from conclusion of the contract.

(2) If we are unable to comply with binding delivery periods for reasons for which we are not responsible (impossibility of performance, no supply of goods/materials to ourselves), we shall inform the Purchaser of this immediately and at the same time inform the Purchaser of the expected new delivery period. If performance is also not possible within the new

delivery period, we shall be entitled to withdraw from the contract in whole or in part; in this case we shall reimburse any service in return (consideration) that has already been provided by the Purchaser without delay. A case of impossibility of performance within this meaning shall be deemed to be in particular the unpunctual delivery of supplies to us by our own supplier if we have concluded a congruent hedging transaction, neither we nor our supplier are/is at fault or we are not obliged to carry out procurement in individual cases.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the Purchaser is required. If we are in default of delivery, the Purchaser can demand flat-rate compensation for its damage caused by delay. The flat-rate compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but in total no more than 5% of the delivery value of the goods which are delivered late. We reserve the right to show that the Purchaser did not suffer any damage at all or only suffered a considerably lower level of damage than the above flat-rate amount.

(4) The rights of the Purchaser according to §8 of these GTC and our legal rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

#### **§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

(1) Delivery shall be made from our warehouse at Fuggerstraße 25, 41352 Korschenbroich, Germany, which is also the place of performance for the delivery and any subsequent performance – and therefore also the place of delivery and the place of the transfer of risk. The “EXW” pick-up clause of Incoterms® 2020 shall apply. Different arrangements are possible in individual agreements. Such arrangements would have to be recorded in written form.

We undertake to pack the goods at our own expense and, after checking the goods, to make them available for export from our warehouse. We are not obliged to load the goods. The Purchaser is responsible for loading, the main transport, transit and importation.

At the request and expense of the Purchaser, the goods will be dispatched to a different destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves. In such a case, the "FCA", "FAS" or "FOB" clauses of Incoterms® 2020 shall apply to transport to the desired destination.

We are entitled to carry out partial performance and delivery to a reasonable extent.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Purchaser upon handover at the latest. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay, is already transferred upon delivery of the goods to the forwarding agent, carrier or the other person or institution that is designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly in the case of agreed acceptance. If the Purchaser is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

(3) If the Purchaser is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). For this we charge a lump-sum compensation amount of EUR 100.00 per calendar day, beginning with the delivery deadline or – in the absence of a delivery deadline – with the notification that the goods are ready for dispatch.

The opportunity to submit proof of a higher level of damages and our statutory claims (in particular reimbursement for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the all-inclusive lump sum shall be set off against any further monetary claims. The Purchaser shall be entitled to prove that we have not incurred any damage at all or only significantly less damage than the above lump sum.

#### **§ 5 Prices and Terms of Payment**

(1) Unless otherwise agreed in an individual case, our prices which are valid at the time of the conclusion of the contract shall apply, i.e. ex warehouse, plus statutory value added tax.

(2) In the case of sale by delivery to a place other than the place of performance (§4, para. 1), the Purchaser shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Purchaser. Any customs duties, fees, taxes and other public charges shall be borne by the Purchaser.

(3) The purchase price shall become due and payable within 10 days of invoicing and delivery or acceptance of the goods. However, we are entitled at any time – even within the framework of an ongoing business relationship – to carry out a delivery in whole or in part only in return for advance payment. We shall declare any such reservation at the latest together with the order confirmation.

(4) Upon the expiry of the above payment deadline, the Purchaser shall be in default. During the period of default, the purchase price shall bear interest at the statutory default interest rate that is applicable at the time. We reserve the right to assert claims for further damages caused by delay. Our claim to the commercial maturity interest (Section 353 of the German Commercial Code (HGB)) against merchants remains unaffected.

(5) The Purchaser shall only have rights of set-off or retention to the extent that its claim is legally established or undisputed. In the event of defects in the delivery, the opposing rights of the Purchaser, in particular those in accordance with §7, para. 6 sentence 2 of these GTC, shall remain unaffected.

(6) If it becomes apparent after the conclusion of the contract (e.g. based on an application for the opening of insolvency proceedings) that our claim to the purchase price is placed in jeopardy by the Purchaser's inability to pay, we shall be entitled in accordance with the statutory provisions to refuse performance and – if necessary after the setting of a deadline – to withdraw from the contract (§321 of the BGB (German Civil Code)). In the case of contracts for the manufacture of unacceptable items (custom-made products), we may declare withdrawal from the contract immediately; the statutory regulations regarding the dispensability of setting a deadline remain unaffected.

## **§ 6 Reservation of Title**

(1) We reserve the ownership of the goods sold until the full payment of all our present and future claims associated with the purchase contract and an ongoing business relationship (secured claims).

(2) The goods which are subject to the reservation of title may neither be pledged to third parties nor transferred by way of security before the full payment of the secured claims. The Purchaser must inform us immediately in writing if an application is made for the opening of insolvency proceedings or if third parties seize the goods belonging to us (e.g. garnishments).

(3) If the Purchaser acts in breach of contract – especially in the case of the non-payment of the purchase price that is due – we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or demand the return of the goods on the basis of the reservation of title. The demand for the return of goods shall not at the same time include the declaration of withdrawal; instead, we shall be entitled to demand the return of the goods only and reserve the right to withdraw from the contract. If the Purchaser does not pay the due purchase price, we may only assert these rights if we have previously set the Purchaser a reasonable deadline for payment without success or if such setting of a deadline is not required according to the statutory provisions.

(4) Until revocation in accordance with (c) below, the Purchaser shall be authorised to resell and/or process the goods which are subject to the reservation of title in the ordinary course of business. In this case the following provisions shall apply in addition.

- (a) The reservation of title shall extend to the full value of the products that are created from the processing, mixing or combination of our goods, whereby we shall be considered to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains unchanged, we shall acquire co-ownership in the same ratio as the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the goods delivered under the reservation of title.
- (b) The Purchaser hereby assigns to us by way of security all claims against third parties arising from the re-sale of the goods or product, in total or to the level of any co-ownership share, in accordance with the preceding paragraph. We hereby accept the assignment. The obligations of the Purchaser referred to in paragraph 2 also apply in respect of the assigned claims.
- (c) The Purchaser shall remain authorised to collect the claim in addition to ourselves. We undertake not to collect the claim for as long as the Purchaser fulfils its payment obligations to us, there is no inability to pay on the part of the Purchaser and we do not assert the reservation of title by exercising a right according to paragraph 3. If this is the

case, however, we may demand that the Purchaser informs us of the assigned claims and their debtors, provides us with all of the details necessary for collection, surrenders the associated documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the Purchaser's authority to continue selling and processing the goods which are subject to the reservation of title.

- (d) If the realisable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the Purchaser's request.

### **§ 7 Warranty Claims of the Purchaser**

(1) The statutory provisions shall apply to the rights of the Purchaser in the event of material defects and defects of title (including incorrect and short delivery, as well as improper assembly or incorrect assembly instructions), unless otherwise specified below. In all cases, the special statutory provisions shall remain unaffected in the case of the final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse according to §§ 478 of the BGB (German Civil Code)). Claims from supplier recourse shall be excluded if the defective goods have been further processed by the Purchaser or another commercial enterprise, e.g. by incorporation into another product.

(2) The basis of our liability for defects is above all the agreement reached on the properties of the goods. All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were made publicly known by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the properties of the goods.

(3) Insofar as the properties have not been agreed, an assessment shall be carried out on the basis of the statutory regulations to determine whether a defect is present or not (§434, para. 1, sentences 2 and 3 of the BGB). However, we shall assume no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) to which the Purchaser has not referred to us as being decisive for its purchase.

(4) We shall not be liable as a matter of principle for defects which the Purchaser is aware of at the time of the conclusion of the contract or is unaware of as a result of gross negligence (§442 BGB). Furthermore, the Purchaser's warranty claims require that the Purchaser has complied with its statutory duty of inspection and notification of defects (§§377, 381 of the German Commercial Code (HGB)). In the case of building materials and other goods that are intended for installation or other further processing, an inspection must be carried out at all events immediately before such processing. If a defect is discovered during delivery, the inspection or at any later time, we are to be notified of this immediately in writing. In all cases, obvious defects are to be reported in writing within five (5) working days of delivery. The above deadline shall also apply from the time of the discovery of any defects which are not identifiable during the inspection. If the Purchaser fails to carry out the proper inspection and/or fails to submit the notification of defects, our liability for the defect which has not been notified or not notified in time or not in the correct manner shall be excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) We are entitled to make the subsequent performance that is owed dependent on the Purchaser paying the due purchase price. However, the Purchaser is entitled to retain a part of the purchase price which is appropriate in relation to the extent of the defect.

(7) The Purchaser shall give us the time and opportunity required for the subsequent performance owed, in particular – at our discretion – to hand over the rejected goods or make them accessible to us for the purpose of inspections. The Purchaser must provide proof that it handled the item with due care and attention and, if the item has been installed or fitted into other items, that it has installed or fitted it in a professional and correct manner. In the case of a replacement delivery, the Purchaser shall return the defective item to us in accordance with the statutory provisions.

(8) The subsequent performance shall not include the removal of the defective item or its re-installation if we were not originally obliged to install it or had not undertaken to do so. The costs and expenses for the removal of the defective item and the installation of the subsequently delivered item shall be borne by the Purchaser. Insofar as we – for whatever reason – are obliged to bear the costs and expenses for the removal of the defective item and/or the installation of the subsequently delivered item, we shall bear these at most up to the amount of the agreed net purchase price of the purchased item.

(9) Moreover, in the event that the regulations or part of the regulations of this provision – in particular the above paragraphs – are invalid or partially invalid, the Purchaser shall give us the time and opportunity required for the subsequent performance owed, in particular – at our discretion – to hand over the rejected goods or make them accessible to us for the purpose of inspections without delay. In the case of a replacement delivery, the Purchaser shall return the defective item to us in accordance with the statutory provisions. Any obligation on our part with respect to subsequent performance shall only include the removal of the defective item or the installation of the subsequently delivered item if we were originally obliged to install it. We shall only assume the costs and expenses incurred for the removal of the defective item or the installation of the subsequently delivered item if we are responsible for the defect.

(10) We shall bear or reimburse the expenses required for the purposes of inspection and subsequent performance, in particular transport, travel, labour and material costs, as well as removal and installation costs, if any, in accordance with the statutory provisions if a defect actually exists. Otherwise we may demand compensation from the Purchaser for the costs arising from the unjustified demand for the repair of defects (in particular testing and transport costs), unless the absence of defects was not apparent to the Purchaser.

(11) In urgent cases, e.g. if operational safety is endangered or in order to prevent a disproportionate amount of damage, the Purchaser shall have the right to remedy the defect itself and to demand compensation from us for the expenses which are objectively required for this. We are to be informed immediately, if possible in advance, of any such self-remedy of defects. The right of self-remedy shall not apply if we would be entitled to refuse any corresponding subsequent performance in accordance with the statutory provisions.

(12) If the supplementary performance has failed or a reasonable deadline to be set by the Purchaser for the supplementary performance has expired unsuccessfully or is not required according to the statutory provisions, the Purchaser may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there shall be no right of withdrawal.

(13) Even in the case of defects, the Purchaser's claims for damages or compensation for futile expenditure shall only apply in accordance with §8 and shall otherwise be excluded.

(14) The Purchaser's rights and claims for defects relating to the purchase of used goods are hereby excluded.

## **§ 8 Other Liability**

(1) Unless otherwise stated in these GTC, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of an infringement of contractual and non-contractual obligations.

(2) Together with our executives and vicarious agents, we shall be liable for the payment of compensation for damages – for whatever legal reason – within the scope of liability for culpable intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in own affairs; an insignificant breach of duty), only

- (a) for damage resulting from injury to life, body or health,
- (b) for damage resulting from the infringement of an essential contractual obligation (an obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on the fulfilment of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the compensation for the foreseeable damage that typically occurs.

(3) The limitations of liability resulting from paragraph 2 shall also apply with respect to third parties and in the event of breaches of duty by individuals (also in their favour) whose fault we are responsible for according to statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee for the properties of the goods has been assumed or for claims of the Purchaser under the Product Liability Act.

(4) Due to a breach of duty which does not consist of a defect, the Purchaser may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination by the Purchaser (in particular in accordance with Sections 650, 648 BGB) is excluded. In all other respects the legal requirements and legal consequences shall apply.

## **§ 9 Limitation Period**

(1) Notwithstanding §438, para. 1, no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from the time of delivery. Insofar as acceptance has been agreed, the limitation period shall

begin upon acceptance.

(2) If the item is a structure or an item that has been used for a structure in accordance with its normal form of use and this has caused its defectiveness (building material), the limitation period shall be five (5) years from the time of delivery in accordance with the statutory provisions (Section 438, para. 1, no. 2 BGB). Other special statutory regulations on the statute of limitations (in particular Section 438, para. 1, no. 1, para. 3, Sections 444, 445b BGB) remain unaffected.

(3) The above limitation periods under sales law shall also apply to contractual and non-contractual claims for damages of the Purchaser which are based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the Purchaser in accordance with §8, para. 2, sentence 1 and sentence 2 (a) and in accordance with the Product Liability Act shall become statute-barred exclusively according to the statutory limitation periods.

### **§ 10 Choice of Law, Place of Jurisdiction and Arbitration Clause**

(1) These GTC and the contractual relationship between us and the Purchaser are governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Purchaser is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Korschenbroich. The above also applies if the Purchaser is an entrepreneur within the meaning of Section 14 BGB. In all cases, however, we shall also be entitled to take legal action at the place of performance of the delivery obligation in accordance with these GTC or a prior individual agreement or at the general place of jurisdiction of the Purchaser. Priority statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.

(3) All disputes relating to quality issues shall be settled in the form of “Bremen friendly arbitration” in accordance with the Arbitration Regulations of the Chamber of Commerce in Bremen (as amended from time to time, currently in the version dated February 29, 2016 (“Economy in Bremen und Bremerhaven” 04.2016, page VII et seq.), to the exclusion of the ordinary courts of law. The text of this arbitration regulation shall be made available by the Seller upon request at any time. The result of this quality arbitration shall then also be binding between the Seller and the Purchaser in the case of other or further disputes within the framework of the contractual relationship. The ordinary legal process is then agreed for such disputes. The Purchaser shall be obliged to cooperate in the above quality arbitration, even if the legal validity of the purchase agreement is disputed by the Purchaser. The invocation of the lack of legal validity in any subsequent court proceedings before the ordinary court shall remain unaffected by this.

### **§ 11 Place of Performance**

The place of performance for the delivery is Korschenbroich. This also applies even if the Seller has undertaken to despatch the goods to a third location. The place of performance for the payment of the purchase price, as well as for the other aspects of performance of the contracting parties – excluding supplementary performance and return as a consequence of withdrawal – shall also be Korschenbroich.

### **§ 12 Supplementary Provisions**

Trade practices which are recognised by international or national law shall also apply, provided that they do not contradict the above provisions. This also applies to the INCOTERMS of the ICC in Paris in the latest version in each case.

### **§ 13 Final Provisions**

Insofar as individual clauses of these General Terms and Conditions or parts thereof are or become (partially) invalid, this shall not affect the validity of the remaining (partial) clauses. In this case, instead of the invalid (partial) clause, a provision shall apply which the Parties would have agreed if they had known of the invalidity. This shall also apply in the event of an omission.