

# **General Terms and Conditions of Delivery, Payment and Purchase (GTDPP)**

## **1. General**

- 1.1 The following General Terms and Conditions of Delivery, Payment and Purchase (in the following referred to as GTDPP) shall apply to all contracts, orders, deliveries and services of the BAGR Berliner Aluminiumwerk GmbH (in the following referred to as BAGR). Deviations from these GTDPP - in particular the applicability of General Terms and Conditions of the supplier or purchaser - require our explicit consent in writing.
- 1.2 Our GTDPP shall also apply, if we unconditionally order, accept confirmation of orders without contradiction or unconditionally render delivery in knowledge of contrary terms of the purchaser or supplier or of terms of the purchaser or supplier that deviate from our GTDPP.

## **2. Conclusion of Contract**

- 2.1 Our offers are subject to confirmation. Orders with BAGR are only binding for us, as far as these are confirmed by us or met by delivery of the goods. Other agreements shall only be formed upon our written confirmation. Should our confirmation of order deviate from our offer, the confirmation of order shall be decisive, if the client or supplier do not object the confirmation of order within 7 days.
- 2.2 BAGR is only bound to own orders, if these are rendered in writing and are undersigned by an authorized person of BAGR.
- 2.3 All agreements made between our contract partner and ourselves for the purpose of performing this Agreement must be set out in writing in this Agreement.
- 2.4 The information, drawings, images, technical data, specifications of weight, measurements and services contained in brochures, catalogues, newsletters, advertisements, price lists or in documents belonging to the offer are non-binding, as far as they are not explicitly referred to as binding in the confirmation of order or in the confirmation letter.
- 2.5 We shall retain the rights of title and copyright to drafts, images, drawings, calculations and other documents surrendered by us. They are to be used only for the processing of our offers and may not be made accessible to third parties without the explicit written consent of BAGR.

## **3. Service and Delivery**

- 3.1 In case of services and deliveries rendered to BAGR the passage of risk shall first occur with the handing-over to BAGR.
- 3.2 Deliveries by BAGR take place ex-works, as far as not otherwise explicitly agreed upon in writing. The risk of accidental loss or accidental deterioration of the item of purchase will pass over to the purchaser at the time of placing the item of purchase at disposal ready for pick-up and giving the respective information to the purchaser, even if carriage paid deliveries have been agreed upon or if collection by the customer takes place.

- 3.3 BAGR performs its services in compliance with the state-of-the-art. The packaging shall take place with best diligence, the shipment shall be performed according to the supplier's best discretion. By request and at the expense of the purchaser the shipment can be insured separately.
- 3.4 In case it is agreed upon that BAGR shall undertake to make sure the transport of the item of purchase, the transport shall occur at the expense and risk of the purchaser.
- 3.5 The choice of way and means of transportation as well as the packaging shall be made according to the best discretion without responsibility for the cheapest shipment in the absence of any specific advice. The item of purchase shall in all cases travel at the risk of the purchaser. This shall also apply in case of transport by our employees. In the latter case the risk shall pass to the purchaser with the begin of the loading of goods.
- 3.6 In case of default in acceptance, culpable breach of other duties to cooperate or delay of shipment or delivery of the item of purchase at request of the purchaser, we shall be entitled to claim any resulting damage including any additional expenses. Further claims are reserved. Provided that the aforementioned conditions are fulfilled the risk of loss or damage of the item of purchase passes to the purchaser at the moment, when he falls into default of acceptance or default of the debtor.
- 3.7 In the case of unobjected acceptance of the item of purchase for transport by the purchaser, the railway or another carrier any liability of BAGR due to improper packaging or loading is excluded. In case of transport by our employees we shall only be liable for intent and gross negligence.
- 3.8 Service and delivery dates shall only be binding for us, if they have been agreed upon or have explicitly been confirmed by us.
- 3.9 The begin of a binding period of delivery requires the clarification of all technical questions and the fulfillment of our delivery obligation requires the timely and proper fulfillment of the purchaser's obligations. The defense of non-fulfilled agreement is reserved.
- 3.10 In case of force majeure - that is all circumstances and incidents that cannot be avoided through the diligence of proper management - which occurs with us and/or our suppliers, as well as in the case of inability of performance/delivery - which we are not responsible for - our obligation to perform and deliver shall be dispensed in the scope and for the period of this effect plus an additional start-up period. Should the hindrance last for longer than 3 months, the purchaser - following adequate fixing of a period of time - is entitled to withdraw from the non-fulfilled part of the agreement. Further claims shall not exist.
- 3.11 BAGR shall be liable in accordance with the legal requirements, provided that the default of performance and/or delivery is based on an intentional or grossly negligent breach of contract for which BAGR is responsible; BAGR shall be liable for any default of its representatives or vicarious agents. Provided that the default of delivery is not based on an intentional breach of contract for which BAGR is responsible, the liability for damages of BAGR is limited to foreseeable, typically occurring damages. Furthermore, BAGR is liable in accordance with the legal requirements provided that the default of delivery for which BAGR is responsible results from a breach of fundamental contract obligations; in this case the liability for damages is, however, also limited to foreseeable, typically occurring damages. Further legal claims of the purchaser are reserved.

- 3.12 BAGR is entitled to partial services. Demand and specification of individual partial services shall take place in as steady periods of time and amounts as possible and in such due time that a proper production and delivery is possible within the contractual term. Should demand and specification not take place in spite of written request, we can, following a period of 3 months, determine amount and time of the partial services by ourselves or withdraw from the agreement or claim damages for non-performance.
- 3.13 BAGR is entitled to return delivered goods that do not correspond with BAGR's written order at the expense of the supplier. Possible sorting costs are for the detriment of the supplier.

#### **4. Acceptance**

- 4.1 Should the item of purchase be examined in accordance with special conditions, the acceptance shall take place at BAGR.
- 4.2 All costs of acceptance of the purchaser as well as costs and fees of governmental or other authorities consulted by the purchaser are to be borne by the purchaser.

#### **5. Impairment of performance, withdrawal from contract, basis of credit**

- 5.1 The supply with raw materials necessary for service or delivery is reserved. We are therefore entitled to withdraw from contract, if we cannot supply ourselves anymore with the necessary raw materials. Claims for damages of the purchaser are then excluded. We reserve the right to adequately modify our prices, if after conclusion of the agreement cost reductions or cost increases take place, in particular due to labor agreements or alterations in material prices. Upon request of the purchaser we shall give evidence of this to him.
- 5.2 In case of default of payment, in case of reasonable doubts regarding the solvency emerging after conclusion of agreement or in case of the purchaser's credit unworthiness we are - without prejudice to any other rights - entitled to demand securities and prepayments for outstanding deliveries and to demand immediate payment of all claims resulting from the contractual relationship.

#### **6. Liability for quality defects**

- 6.1 All specifications regarding characteristics, processing and application of our products, technical consultancy as well as any other specifications are rendered to the best of our knowledge, are, however, non-binding. These specifications do not exempt the purchaser from an own examination and respective tests. Agreements as to characteristic/condition and the guarantee of a characteristic/condition have to be declared explicitly by us.
- 6.2 At receipt the purchaser must immediately examine the delivered item of purchase - if reasonable also by means of probational processing - with regard to quality and defects regarding characteristic/condition and purpose of use; otherwise the item of purchase shall be deemed to be approved.
- 6.3 Objections will only be accounted for, if they are raised in writing with enclosed documents within 8 days following the receipt of the item of purchase - in case of latent defects immediately after their detection, at the latest however 12 months after receipt of the item of purchase. At our request the purchaser shall send us at his own expense the item of purchase for the purpose of examination of the existence of the defect.

- 6.4 Objections concerning the weight, the number of items, the measurement and the quality can only be raised, if the deviations are not customary in the trade or are not reasonable for the purchaser. For objections concerning DIN-standardized goods the DIN-tolerances shall apply. Liability for normal wear is excluded.
- 6.5 In the case of a defect of the item of purchase the purchaser at his own choice is entitled to alternative performance in the form of remedy of the defect or delivery of conforming goods. In the case of remedy of the defect we are obliged to bear all necessary expenses, in particular costs of transport, road, labor and material, for the purpose of remedy of the defect, provided these are not increased due to the fact that the item of purchase has to be brought to a place deviating from the place of fulfillment. If rectification of the defect is unsuccessful, the purchaser may at his own choice withdraw from the contract or reduce the compensation. The period of warranty shall be 12 months as of passage of risk. Objected items of purchase may only be returned to us with our explicit consent.
- 6.6 Only the direct purchaser is entitled to claims based on defects against BAGR; they are not assignable.
- 6.7 BAGR is obligated to examine the item of purchase within an adequate term as to deviations in quality and quantity; the objection is in due time, if it is received by the supplier within a period of 8 working days as of receipt of the item of purchase or in case of latent defects as of detection. BAGR is entitled to the legal claims for damages unabridged; in any case BAGR is entitled at its own choice to demand from the supplier remedy of the defect or delivery of conforming goods. The right of claims for damages instead of performance is explicitly reserved. In the case of imminent danger or particular urgency BAGR is entitled to undertake the remedy of defect on its own at the expense of the supplier. The limitation period shall be 36 months as of receipt of the item of purchase.

## **7. Claims for damages, general limitation of liability**

- 7.1 We are liable in accordance with the legal requirements provided that the purchaser asserts claims for damages that result from intent or gross negligence including intent or gross negligence of our representatives or vicarious agents. As far as we are not liable for intentional breach of contract, the liability for damages is limited to foreseeable, typically occurring damages. We are liable in accordance with the legal requirements provided that we are in breach of fundamental contract obligations; in this case, however, the liability for damages is limited to foreseeable, typically occurring damages. The liability for culpable breach of life, body or health remains unaffected; this also applies to the mandatory liability pursuant to the Product Liability Act. As far as not otherwise stipulated above, liability is excluded. A liability reaching further than claims for damages is excluded regardless of the legal nature of the asserted claim. This in particular applies to claims for damages resulting from culpability at conclusion of agreement, other breach of obligations or tortious claims for compensation of property damage. Inasmuch as BAGR's liability for damages is excluded or limited, this shall also apply with regard to employees, members of staff, representatives and vicarious agents of BAGR.
- 7.2 The purchaser or supplier is obligated to immediately notify BAGR in writing of any damages that BAGR shall be liable for or to have these ascertained by BAGR.

## **8. Prices, payments, packaging**

- 8.1 Payment obligations of BAGR are due and payable within 30 days from the receipt of the invoice, unless otherwise agreed. In case of payment within 10 days following the

- receipt of the invoice BAGR is entitled to a cash discount deduction in the amount of 2 % of the invoice amount.
- 8.2 In case of deliveries to BAGR we are entitled to return packagings at the expense of the supplier for transport and recycling. Returned reusable packaging the supplier shall credit in our favor at its full value.
  - 8.3 Prices are without cash discount and other discounts exclusive of the respective statutory value added tax. Costs for packaging and shipment as well as ancillary services agreed upon are additionally charged. In the case of pick-up price business dealings the modalities and price are stipulated in the contract of delivery.
  - 8.4 The total price is due and payable within 30 days from the date of the invoice. In case of payment within 10 days following the date of the invoice BAGR will grant a cash discount in the amount of 2 % of the net value of goods. Payment within 30 days must be met net. A longer date of payment requires an explicit agreement. A cash discount deduction is excluded provided that payment obligations of the purchaser still have to be settled due to prior due and payable invoices.
  - 8.5 No prohibition of assignment of claims of the purchaser shall apply with regard to the claims for payment of BAGR.
  - 8.6 Payment instructions, checks and bills of exchange of the purchaser are only accepted after separate agreement and only on account of performance. The purchasers shall bear the costs of discounting and collection.
  - 8.7 Should our packaging be exchangeable packaging according to agreement, it is to be returned to us immediately, otherwise we will charge the costs for the new acquisition. Provided that exchangeable flat pallets and box pallets are charged by means of the pallet check process, fees for the return of such pallets within 4 weeks shall only accrue in the amount of the expenses actually incurred by us. After expiration of the return term we will charge the costs for new acquisition. For inland purchasers following shall apply: Our packaging usually is sales packaging in the sense of the Packaging Order (VerpackO) dated 12.06.1991. Provided that it is sales packaging, the purchaser may return such packaging, sorted by materials, to us for recycling; the purchaser shall bear the costs for return transport and recycling.
  - 8.8 The legal requirements concerning default of payment (claims for damages, withdrawal from contract) shall apply.
  - 8.9 If BAGR should become aware of circumstances that question the credit worthiness of the purchaser, in particular if he should not cash a check or should stop payments and the like, BAGR is entitled to demand immediate payment of the entire remaining debt, even if BAGR has accepted checks. In this case BAGR is furthermore entitled to demand prepayments or securities.
  - 8.10 Only undisputed and legally established claims entitle the purchaser to set-off and retention. The purchaser is only entitled to exercise a right of retention inasmuch as his counterclaim arises out of the same contractual relationship.
  - 8.11 Provided that the claims against the purchaser are overdue and the mercantile collection procedure was not successful, we are entitled to mandate a collection service with the assertion of the claim. The purchaser shall bear the costs resulting herefrom in a customary amount legal representatives may claim.

## **9. Retention of Title**

- 9.1 The delivered goods shall remain the property of BAGR until the complete payment of all receivables under the business relationship with the purchaser. The purchaser is permitted to dispose of the delivered goods in the course of ordinary business, unless he is in default. Insofar as the securities granted to us exceed our total claims by more than 10 %, we will at our own choice respectively release such securities upon the purchaser's request.
- 9.2 The retention of title also extends to products resulting from processing of, mixing with or linking to our items of purchase to their full value, whereas we are to be considered as the producer of these products. Should in the case of processing of, mixing with or linking to third party products the property right of such third party remain, we shall acquire joint ownership in a ratio of the invoice values of these processed products.
- 9.3 Claims against third parties arising out of resale or any other legal ground (insurance, tortious act etc.) the purchaser hereby already assigns as security entirely or in the amount of our possible share in the joint ownership (see 9.2). No prohibition of assignment of the purchaser shall apply with regard to these (partially) assigned claims. The purchaser is entitled to receive the payment on the claims until the revocation or the discontinuation of his payments to us for our account. The purchaser is not entitled to the assignment of these claims, even not for the purpose of collection of debts by means of factoring, unless at the same time the obligation of the factor is established to pay the consideration in amount of our share in the claim directly to us as long as we still have claims against the purchaser.
- 9.4 During the period of retention of title the purchaser is obligated to keep the items of purchase delivered to him - unless he has disposed of these in the course of ordinary business - in proper condition and to immediately have performed all maintenance work envisaged by us as well as all necessary repairs - except for emergencies - by us or an adequate repair shop.
- 9.5 The purchaser shall immediately inform us in the case of access of third parties to goods and claims belonging to us.
- 9.6 Before complete payment of our claims, the goods as well as the claims taking the place of these goods may neither be pledged to third parties nor be transferred or assigned as security. Should in the case of resale the purchase price be deferred in favor of the recipient, the purchaser shall make sure that retention of title of the resold item of purchase is agreed upon with such recipient to the same conditions under which we are entitled to retention of title in the case of delivery of the goods subject to reservation of title.
- 9.7 Should the purchaser be in default or payment or not fulfill his obligations resulting from the retention of title, we are entitled to demand default interest in the amount of 9 % above the respective base interest rate. Furthermore, we are entitled to demand delivery of the item of purchase burdened with the retention of title from the purchaser and - following written notification of an adequate term - to best possibly exploit the item of purchase by means of freehand sale while deducting the proceeds of the exploitation from the purchaser's liabilities towards us. The purchaser shall bear all costs for the return and the exploitation of the item of purchase. Without proof the cost of exploitation shall amount to 10 % of the proceeds of exploitation including value added tax. They shall be set higher or lower, if we prove higher or the purchaser proves lower costs. The proceeds will be credited to the purchaser following the deduction of the costs as well as any other claims connected with the delivery agreement.

## **10. Breach of third party rights**

In the case that the services or deliveries are rendered in a specific way of realization specified by the purchaser according to drawings, patterns or other specifications, the purchaser shall take over guarantee that through this realization no third party rights, in particular patents, petty patents, designs or trademarks, copyrights or other protection are breached. The purchaser commits himself to exempt us from any third party claims that result from such breach. Furthermore, the purchaser is liable to us for any damages resulting from such breach, including loss of profit.

## **11. Collection, storage and forwarding of data**

The seller is entitled to collect, store, process, use and forward to third parties for the purpose of collection of assigned debts or outsourced debtors' management information and data on the purchaser for the purpose of storage, processing and use.

## **12. Place of fulfillment and jurisdiction**

- 12.1 Place of fulfillment for all claims resulting from agreements with BAGR is the registered office of BAGR.
- 12.2 Place of jurisdiction shall exclusively be Berlin; we shall however be entitled to bring action against the contractual partner also at his court of registered office.
- 12.3 The Law of the Federal Republic of Germany shall apply exclusively, excluding the UN Convention on the International Sale of Goods.