



# BÄRWOLF

## GENERAL TERMS AND CONDITIONS OF SALE

### I. GENERAL

1. The following General Terms and Conditions of Sale apply to all offers, sales and supplies made by Bärwolf GmbH & Co. KG in their respectively valid version for the entire business relationship. They also apply to products that are not contained in the current price list and to supplies and products that are manufactured outside of Germany and supplied to Germany.

Terms of procurement of the purchaser that differ from, conflict with or supplement these terms are only valid if we have expressly consented to their application in writing. Fulfilment of the contract by us does not replace this written confirmation.

2. A pre-requisite for deliveries is the creditworthiness of the purchaser. If, following the entry into the contract, the supplier receives information that makes it inappropriate to grant credit in the amount resulting from the order, or if facts emerge that give rise to doubt in this regard, and in particular if there is a material deterioration in the financial situation (enforcement, cessation of payments, insolvency, liquidation, transfer of business, etc.), the supplier is entitled to demand payment in advance and/or security deposits or cash payments, irrespective of any previous agreements to the contrary.

### II. OFFERS

To the extent not identified as binding, our offers are non-binding and create no obligation to accept an order.

### III. PRICES, PAYMENT TERMS

1. Unless otherwise expressly agreed, the prices are based on the currently applicable version of the supplier's price lists. In this respect, the price applicable on the day of the order confirmation is decisive for the calculation. The prices are binding for a delivery within four months of entry into the contract. For later delivery dates, the supplier is entitled to increase the prices if circumstances change after entry into the contract, in particular if there is an increase in the price of raw materials or other costs. In this situation, the price changes are possible only within the context of and to offset the stated price and cost increases.

2. Unless otherwise expressly agreed, the prices are expressed from the Herne warehouse, inclusive of transport packaging but exclusive of statutory VAT at the applicable rate.

3. Payments are to be made to an account specified by the supplier.

4. The purchaser can only set off those receivables that are not disputed or that have been judicially determined.

### IV. DELIVERY AND DELAY

1. Unless otherwise expressly agreed in writing, the delivery dates and delivery deadlines stated are not binding and no warranty is made for complying with the same.

2. Compliance with the agreed deadlines for deliveries requires the timely receipt of all cooperation negotiations to be provided by the purchaser, as well as the purchaser's compliance with the agreed payment terms and other obligations. If these requirements are not satisfied in a timely manner, the deadlines will be extended appropriately.

3. The delivery deadline will be extended appropriately in the event of measures as part of lawful industrial disputes, in particular strikes and lock-outs in our own company as well as in third-party companies (irrespective of the lawfulness of the industrial dispute), provided we are not guilty of any failure to take over, to take precautions or to avert; furthermore, in the event of unforeseen occurrences such as mobilisation, war, blockade, import and export bans, special statutory or official regulations, a lack of raw materials or fuel, fire or traffic closures, or force majeure if such hindrances demonstrably have an influence on the completion or delivery of the delivered item and occur in the supplier, in an upstream company or with a subcontractor or transport company and are not attributable to the supplier, whereby the supplier's liability is only excluded for slight negligence. If the above circumstances make it impossible for the supplier to provide the service, the supplier is also entitled to withdraw from the contract.

4. In the event of delay by the supplier, the purchaser is entitled to its statutory rights. However, the purchaser can only bring a claim for damages if the supplier, its legal representatives or vicarious agents have acted wilfully or with gross negligence, or there is mandatory liability for damages resulting from death, bodily injury or injury to health, or from a breach of material contractual obligations. Damages for a breach of material contractual provisions are however limited to foreseeable losses typical for this type of contract, provided that no wilful intent or gross negligence exists, or the losses are not attributable to the supplier resulting from death, bodily injury or injury to health.

At the supplier's request, the purchaser is obliged to state within a reasonable period of time whether, despite the delay, it demands performance or rejects performance due to the delay.

5. If dispatch is delayed at the request of the purchaser or for reasons attributable to the purchaser, the supplier will charge the purchaser the costs arising from storage, and in the case of storage in the supplier's warehouse at least 0.5% of the invoice amount, for each month started, beginning 10 days after the supplier notifies the purchaser that it is ready to dispatch the goods. This does not affect the right to enforce other claims arising as a result of the delay. Furthermore, after setting an appropriate deadline for acceptance of the goods and expiry of the same without a satisfactory result, the supplier is entitled to otherwise dispose of the items to be delivered and to re-supply the purchaser after an appropriate time limit or to withdraw from the contract and/or demand damages.

### V. LOADING AND PACKAGING

1. The costs of loading are to be borne by the purchaser. Where pool pallets are used for loading, these are to be returned by the purchaser after delivery. Any missing pallets will be invoiced to the purchaser.

2. The packaging will not be taken back unless a corresponding agreement has been made.

Transportation packaging will be taken back within the scope of the legal obligations. The costs of returns by the purchaser and by the purchaser's customers will not be met by the supplier.

### VI. SHIPPING

1. Shipping is at the risk of the purchaser.

2. Risk passes when the delivery is given to the shipping agent, when it leaves the factory or warehouse, irrespective of whether this is undertaken from the place of performance and who pays for the shipping costs. If shipping or acceptance is delayed for reasons not attributable to the supplier, risk passes on the day on which the goods are ready to be shipped. The supplier is not liable for damage to or loss of the goods during transportation. This does not apply if the damage is caused by incorrect packaging.

3. Apparent and/or visible transportation damage is to be notified to and acknowledged by the deliverer/driver in writing immediately upon delivery. Furthermore, any transportation damage is to be sufficiently documented and logged, including by taking photographs. The purchaser is furthermore obliged to immediately inform the supplier about any transportation damage by sending it the relevant documents. A breach of these obligations leads to the loss of any claims based on transportation damage.

### VII. PAYMENT TERMS

1. Unless otherwise expressly agreed, all invoices are payable immediately and without deduction. The day on which payment is received determines the timeliness of the payment.

2. In the case of a payment delay, the supplier is entitled to withhold deliveries and/or other services under all contracts until all payments owed by the purchaser to the supplier have been paid in full. The purchaser can avert this right of retention by providing a directly enforceable and unrestricted surety from a credit institution located in Germany for the amount of all outstanding payments. After the expiry of a payment deadline set by the supplier without a successful result, the supplier is also entitled to withdraw from all contracts that have not yet been carried out. The right to claim further damages is reserved.

3. In the event of a payment delay by a purchaser that is a business, such purchaser must pay interest at a rate of 9 percentage points above the base rate. The rights to claim further damages and the statutory provisions in the event of a default on debts are unaffected.

4. Any discount granted is only applied against the final invoice amount excluding costs of transportation and other ancillary costs.

5. Payments by cheque will only be deemed to have been made when cleared.

### VIII. RIGHT OF RETENTION

1. The supplier retains the title to goods supplied by it, as well as the work products resulting from their treatment or processing, until all present and future claims - including contingent and limited claims - that the supplier has against the purchaser resulting from the business relationship have been settled. If the purchaser is late in making payment, the supplier is entitled to enforce its right of retention without withdrawing from the contract.

2. The purchaser is obliged to store separately and label goods that are subject

to retention of title. The purchaser will undertake any treatment or processing for the supplier without this giving rise to obligations on the part of the supplier. If the purchaser processes the supplier's goods that are subject to retention of title with other items that are not its property, the supplier shall have co-ownership of the new products in the proportion that the value of the retained goods bears to the other articles at the time of processing or treatment. Any co-ownership rights of the purchaser resulting from the purchaser combining, amalgamating or mixing the goods supplied with other items are transferred now by the purchaser to the supplier. The purchaser will hold the items as custodian. It is liable for its own deliberate and negligent behaviour, as well as that of its legal representatives and people it employs to satisfy its obligations. The purchaser may only sell the goods supplied and the items resulting from the purchaser combining, amalgamating or mixing the goods supplied with other items within the course of proper business transactions against cash payment or subject to retention of title. Assigning the goods by way of security, pledging and other disposals that prejudice the rights of the supplier are not permitted.

3. The purchaser now assigns to the supplier the full amount of any receivables arising from the resale or another legal basis relating to the retained goods, including receivables for compensation payments due to the damage or destruction of the retained items, irrespective of whether these are contractual or statutory claims against the party that caused the damage, insurance companies or other third parties, and to compensation for derived profits.

4. If the retained goods are sold by the purchaser in a non-processed condition together with its own or third party goods, the purchaser assigns to the supplier the receivable arising from the resale in the amount of the retained goods.

5. If the supplier acquires co-ownership of the new item as a result of treatment or processing of the retained goods with goods belonging to other suppliers, the assignment upon resale includes the receivable that corresponds to the supplier's ownership share of the item provided that this can be determined; otherwise it is the invoice value of the processed retained goods.

6. If the treatment or processing is undertaken as part of a contract for work or a contract for work and materials, the purchaser assigns in advance to the supplier its claim for payment for work that corresponds to the value of the processed retained goods.

7. Provided that the purchaser satisfies its obligations, the assignment will be treated as an undisclosed assignment and the purchaser is authorised to collect the receivable. The purchaser must separately account for and separately keep amounts received relating to the assigned receivable.

8. In the event that the contracts entered into by the purchaser for the resale of the retained goods are ineffective or void, the purchaser now assigns to the same extent the statutory claims it has in place of the assigned contractual claims, in particular claims for unjust enrichment.

9. If and to the extent the registration and / or the fulfilment of other requirements is a pre-requisite for the effectiveness of the retention of title, the purchaser is obliged to take the necessary actions for this at its own cost and without delay and to provide all the necessary notifications.

10. The purchaser must immediately notify the supplier of any access by third parties to the retained goods or the assigned receivables, and provide the supplier with the documents necessary for the intervention. The purchaser will bear the costs of the intervention.

11. The purchaser will bear the costs of returning the retained goods.

12. In the event that the purchaser's liability is settled by participating in the direct debit procedure, all of the supplier's rights from the retention of title set out above shall continue to exist until it is no longer possible to revoke the direct debits, provided that the supplier's rights do not nevertheless continue to exist as a result of the preceding provisions.

## IX. WARRANTY

1. The provisions of the German Commercial Code (HGB) apply to the inspection of goods and the notification of defects, subject to the following conditions:

a) The purchaser is obliged to inspect the properties of the goods that are crucial to the respective use immediately after delivery for obvious defects and to notify the supplier in writing of any obvious and/or apparent defects and to immediately cease any treatment or processing. If it is intended to install or mount the goods, the crucial properties for installation or mounting also include the internal properties of the goods and in this regard a random functional test and/or test installation is to be performed before installing or mounting.

b) A breach of the obligations to carry out an inspection and notify defects represents a major non-compliance with the usual care required in the ordinary course of business vis-à-vis the supplier and therefore gross negligence, and claims for defects are excluded. This provision shall not apply if the supplier has maliciously concealed a defect and/or has given a guarantee for the properties of the item.

2. For a defect claim, the purchaser initially has the right to subsequent performance. In this respect, the supplier will - in its discretion - rectify the item or provide a replacement. If both types of subsequent performance are associated with disproportionate costs within the meaning of section 439 para. 4 German Civil Code (BGB), the supplier is entitled to refuse both types of subsequent

performance.

3. If subsequent performance is unsuccessful or if it is justifiably refused by the supplier, the purchaser can request the rescission of the contract (rescission) or a reduction in the payment (reduction). The purchaser does not have a right of rescission in the case of a minor breach of contract, in particular where there are only minor defects.

4. If the purchaser has installed the defective item into another item or affixed it to another item in accordance with its nature and purpose, the purchaser can demand compensation for the costs necessary to remove the defective item and install or affix the subsequently rectified or newly supplied functioning item. Consequential loss of the purchaser caused by defects, such as loss of profit, downtime costs or additional costs for obtaining replacements are not dismantling or installation costs and are therefore not eligible for reimbursement as a reimbursement of expenses pursuant to section 439 para. 3 BGB.

5. The purchaser's claims for damages - irrespective of their legal basis - are excluded. This does not apply if the supplier, its legal representatives or vicarious agents have acted with intent or gross negligence or, pursuant to the German Product Liability Law (Produkthaftungsgesetz), for damages resulting from death, bodily injury, injury to health or a breach of material contractual obligations and which are attributable to the supplier and for which liability is legally mandated. However, damages for a breach of material contractual obligations is limited to foreseeable losses typical for the type of contract, provided that there is no intent or gross negligence, or mandatory liability for damages attributable to the supplier resulting from death, bodily injury or injury to health.

6. It is the sole responsibility of the purchaser that the quality and properties of the goods are suitable for its special intended use. A lack of suitability does therefore not give rise to any claims, unless the supplier expressly provided a written warranty regarding the suitability of the goods for the intended purpose. Specifications of properties provided by the supplier do not constitute a warranty in the legal sense. Any manufacturer warranties are not affected by this.

7. The purchaser's claims for defects expire one year after delivery of the goods. This does not apply if the supplier has maliciously concealed a defect or if the law mandatorily provides for longer limitation periods pursuant to section 438 para. 2 no. 2 BGB (buildings and building materials), and section 445b BGB (right of recourse).

8. The purchaser's claims for damages expire one year after delivery of the goods. This does not apply if the defect is based on intent or gross negligence, or non-compliance with warranties, as well as damages attributable to the supplier resulting from death, bodily injury or injury to health.

9. Negotiations between the parties will not lead to a suspension of the limitation period pursuant to section 203 BGB.

10. In the case of subsequent performance, the limitation period will not be reset.

11. Advice provided by employees of the supplier neither constitutes a legal relationship nor an ancillary obligation under the contract, meaning that the supplier is not liable for such advice, subject to any agreements that may be expressly issued in writing.

12. Recourse claims by the purchaser against the supplier pursuant to section 445 a BGB exist only to the extent that the purchaser has not made any agreements with its customers that go beyond statutory defect claims.

## X. PRODUCT LIABILITY

The supplier is liable for the product in accordance with the laws of the Federal Republic of Germany in force. Any liability beyond that prescribed by law is hereby excluded. All damages payments not resulting from the statutory provisions regarding product liability and which are not prescribed by law are hereby expressly rejected.

## XI. DATA PROTECTION

The purchaser is hereby informed that - to the extent permitted by law - personal data will be collected, stored and processed. Further information can be found in the data protection statement that can be found on the internet at [www.baerwolf.com](http://www.baerwolf.com) and which can also be requested from the data protection officer of Bärwolf GmbH & Co. KG.

## XII. SEVERABILITY CLAUSE

If one or more provisions of these General Terms and Conditions of Sale is void, ineffective or contestable, the remaining provisions remain effective and binding.

## XIII. PLACE OF PERFORMANCE AND PLACE OF JURISDICTION

The place of performance for our supplies and services, as well as the place of jurisdiction for all disputes arising under the contractual relationship relating to its existence and effectiveness, is Herne. The law of the Federal Republic of Germany applies.

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