

BRUCHA Gesellschaft m.b.H General Terms of Sale and Delivery

1. GENERAL

- 1.1. The following general terms of sale and delivery are deemed exclusively incumbent on all Brucha GmbH deliverables comprised of goods and services, including subsequent orders under an ongoing contract.

Should any deviating or complementing terms be agreed these require the express written confirmation of Brucha GmbH to become effective.

Any General Terms & Conditions of Brucha GmbH contractual partners (herein also referred to as purchaser/principal) even if enclosed to the requests for tender, orders, acceptance statements or similar are deemed not to constitute a part of the contract even if Brucha GmbH does not expressly object to such.

- 1.2. Orders are only deemed accepted following express written confirmation by Brucha GmbH. Brucha GmbH herewith assumes no liability for any clerical errors in offers as well as errors objected to following corrections and release by the purchaser/principal.
- 1.3. The information found on the internet, in catalogues, brochures, memorandums, advertisements, and any other depictions of the prices, delivery schedules, dimensions, and materials published by Brucha GmbH are deemed solely informative and non-binding.

2. ORDER ACCEPTANCE AND RIGHT OF WITHDRAWAL

- 2.1. Orders shall be exclusively accepted by Brucha GmbH in the form of a written order confirmation. If Brucha GmbH determines that the creditworthiness of the purchaser/principal or the issue of the order do not meet the respective requirements, Brucha GmbH is entitled to withdraw or demand advance payment or appropriate guarantees.
- 2.2. Offers presented by Brucha GmbH are deemed binding over a period of four (4) calendar weeks. Should no written order be received by Brucha GmbH from the purchaser/principal within the four (4) calendar weeks, then all and any offers presented by Brucha GmbH are deemed no longer binding.

3. PRICES

- 3.1. All prices are exclusive of insurance and any other ancillary costs, ex-works, or ex-warehouse. Value-added tax is not included and will be calculated separately. Any fees, taxes, ancillary expenses or other additional charges becoming due in connection with the delivery shall be borne by the purchaser/principal.
- 3.2. The price calculation is based on the respective current costs at the time of price announcement. Should such costs change by the time of delivery, any cost increases shall be borne by the purchaser/principal. Any price increases resulting from errors in calculation will be subsequently charged to the purchaser/principal.
- 3.3. Should the circumstances under which the contract has been concluded change to such degree that it may be assumed that under such changed circumstances the contract would have not been concluded at all, Brucha GmbH is entitled to withdraw from the contract (in case of an already accepted offer) or withdraw their offer without being held liable for any consequences of such withdrawal. This is deemed in particular applicable when the factors decisive for Brucha GmbH price calculation have changed to such extent that merely 75 percent of the margin originally calculated by Brucha GmbH could be achieved.
- 3.4. Upon conclusion of the contract with no set prices, the sales prices applicable on the respective day of delivery will be charged.
- 3.5. All and any settlement is based on the respective design plans and parts lists of Brucha GmbH as well as the actually delivered quantities. The area of the construction elements is calculated from the greatest length x the greatest unit width. Angular cuts, cut-outs, and prefabrications shall be charged separately.

4. TERMS OF PAYMENT / EXCLUSION OF OFFSETTING / RETENTION OF TITLE

- 4.1. Payments are to be effected in accordance with the agreed terms of payment whereby Brucha GmbH is deemed entitled to present partial invoices.
- 4.2. All and any invoices issued by Brucha GmbH are deemed due within ten (10) calendar days. Upon default of payment Brucha may charge default interest amounting to 10 percent over the respective applicable bank base rate. Moreover, all and any dunning, collection, and legal charges are to be borne by the purchaser/principal.
- 4.3. The purchaser/principal is not entitled to retain any payments attributable to warranty/damage claims or any other claims raised against Brucha GmbH. Offsetting of any counterclaims by the purchaser/principal is deemed excluded. The right of Brucha GmbH to offset remains unaffected thereby.

4.4. Bills of exchange shall only be accepted upon express written agreement and only on account of payment without obligation of protest. Any collection and discounting fees shall be borne by the purchaser/principal.

4.5. The delivered goods remain the property of Brucha GmbH until payment has been effected in full. The purchaser/principal is merely entitled to sell on the goods as part of their normal business operations.

Brucha GmbH must be notified immediately by means of registered mail of any foreclosure measures expected or already implemented upon property, insofar as these affect our retention of title. Until this notification has taken place, the purchaser/principal must undertake all expedient measures to prevent executive intervention at their own expense. Any costs of attachment nullity proceedings shall be reimbursed by the purchaser/principal.

Should Brucha GmbH assert retention of title, they are then deemed entitled to void the purchaser/principal's right of use to Brucha GmbH goods without recourse to any legal action. Brucha GmbH may also at their own discretion freely liquidate the goods and use the resulting revenues to cover all and any fees without prejudicing any assertion of further recourse.

At the time of contract conclusion, the purchaser/principal assigns all their claims and other rights originating from reselling or other exploitation to Brucha GmbH should payment not be effected in full or not at all, even if the respective deliverable has been attached to other objects or processed.

4.6. In case of contract infringing behavior on the part of the purchaser/principal, in particular in the case of default of payment or insolvency, Brucha GmbH is, upon continuance of the contractual relationship, deemed entitled to withdraw the respective deliverable at any time or to prohibit any further use of such (in particular its processing). Furthermore, Brucha GmbH is deemed entitled to freely sell the withdrawn deliverable. The revenues less handling fee of 30 percent of the realized proceeds will be credited towards the outstanding receivables.

Notwithstanding the aforesaid, Brucha GmbH is deemed entitled to fully or partially withdraw from the contract in writing upon contract infringing behavior of the purchaser/principal (e.g. upon corresponding notification by third parties, presentation of an offer for an extra-judicial settlement to customers or an application to institute insolvency proceedings). The withdrawal can also be declared regarding the still outstanding part of the delivery or service. Notwithstanding any Brucha GmbH claims for recourse, all and any services or partial services already rendered at the time of contract termination shall be charged and paid for as contractually stipulated. This shall also apply to deliveries or services not yet accepted by the purchaser/principal as well as for all preparatory activities made by Brucha GmbH. Brucha GmbH are additionally entitled to demand returning of the already delivered objects.

5. PASSING ON OF RISK

The risk is passed on to the purchaser/principal as soon as the goods leave the Brucha GmbH works (works or warehouse) or has been handed over by Brucha GmbH or an authorized Brucha GmbH third party to a haulage company. Should the dispatch be delayed attributable to reasons outside the sphere of influence of Brucha GmbH, the risk is deemed passed on to the purchaser/principal with the notification of readiness for delivery.

6. DELIVERY SCHEDULE

6.1. Brucha GmbH is entitled to perform partial and preliminary deliveries.

6.2. Brucha GmbH always endeavors to dispatch deliverables in good time. The delivery schedules announced by Brucha GmbH are deemed however non-binding unless expressly agreed in writing as a fixed delivery dates. The delivery dates are always deemed to be an approximation and start no earlier than with the written order confirmation however always after final clarification of all technical delivery details and any financial prerequisites.

Any times specified by Brucha GmbH in context of the delivery dates are pure guidelines and thus deemed non-binding.

6.3. Any events unencumbered by Brucha GmbH resulting in obstruction or delay of deliveries such as strikes, loss of material deliveries, machine malfunction, obstruction of traffic routes or force majeure events entitle Brucha GmbH at their own discretion to either reasonably extend the delivery deadlines or withdraw from the contract.

6.4. If the non-binding delivery date specified by Brucha GmbH has been exceeded by fourteen (14) days, then the purchaser/principal is entitled after having granted a grace period of further fourteen (14) days, to withdraw from the contract in writing however excluding any claims for compensation resulting herefrom. All and any claims for compensation resulting from late deliveries and raised against Brucha GmbH are deemed excluded, unless such delay is attributable to an intentional or gross negligent action of Brucha GmbH.

6.5. Should the purchaser/principal not accept the contractually provided goods at the contractually agreed time, Brucha GmbH is then deemed entitled to demand the performance of the contract. Brucha GmbH also reserves the right to store the goods at the principal's expense and risk until collection of the goods by the principal. Furthermore, Brucha GmbH is entitled to grant the purchaser a grace period of maximum seven (7) calendar days and after ineffectual expiry of such at their own discretion either to dispose of the goods in any other way or to withdraw from the contract and demand compensation for non-performance.

- 6.6.** In case of acceptance delay on the part of the purchaser/principal, warehousing fees as set forth in item 6.8 will be charged starting with the point of delivery (item 6.6.) up to the point of the actual acceptance by the purchaser/principal or the point of contract withdrawal on the part of Brucha GmbH.
- 6.7.** Brucha GmbH deliveries are deemed fulfilled:
- a) upon notification of readiness for shipment for ex-works deliveries,
 - b) upon dispatch of the goods from the works/warehouse (transfer to haulage company, railways, post, collection agent, etc.) for deliveries including agreed shipment.
- 6.8.** Should the delivery or collection be delayed at the request of the purchaser/principal, the goods will be stored by Brucha GmbH at no charge for a maximum of three (3) calendar days. After this period a warehousing fee of three (3) percent of the contractual value will be charged for every started calendar week. The delay request must be notified in writing to Brucha GmbH at least fourteen (14) days before the agreed delivery date (point of receipt); otherwise the warehousing fee is to be paid starting from the originally agreed delivery date.
- 6.9.** In case of delayed collection of goods by the principal Brucha GmbH reserves the right to raise all and any claims for indemnification.
- 6.10.** Should transport/dispatch of goods be contractually agreed, then such is performed at the sole risk and cost of the purchaser/principal. Should no agreement be made on the type of transportation/dispatch and the dispatch method, the decision thereon is at the sole discretion of Brucha GmbH with exclusion of any liability. Any transport insurance shall only be taken out by Brucha GmbH on behalf and at the expense of the purchaser/principal.

7. WARRANTY/LIABILITY

- 7.1.** Provided any defects have been appropriately and immediately notified in writing, Brucha GmbH warrants pursuant to the subsequent stipulations for the functionality of their products over a period of six (6) months from the date of delivery as set forth in item 6.7. Brucha GmbH takes on no warranty regarding customary or otherwise accepted dimensions, weight and quality deviations from the EN/Austrian norms as well other technical standards.

Any extension by Brucha GmbH of this warranty period attributable to a potential defect remedy is deemed excluded.

- 7.2.** Brucha GmbH only assumes liability for such defects which have been asserted before court and previously notified in writing immediately after defect identification within six months from the point of passing on of the risk as a result of a cause originating before such point of time.

- 7.3.** The purchaser/principal is obliged to inspect the goods for any potential defects immediately after delivery. Acceptance of goods showing obvious defects waives any warranty and indemnification claims. Other defects identifiable in the course of appropriate examination are to be notified not later than within three calendar days of receipt of goods. Defects not identifiable in the course of appropriate examination are to be notified not later than within three days of identification of such.

The notice of defects is always to be in writing (date of postage is deemed sufficient for observance of deadline) and must state the date of the invoice and the delivery note.

Such notice of defects is to state which parts of the goods are affected by the defects, individual details constituting the defects and under which associated circumstances such defects have appeared. Each individual defect is to be accurately described and documented by a photograph. Costs attributable to unjust or contrary to stipulations notices of defects are to be reimbursed to Brucha GmbH.

If a notice of defects is not compliant with the aforesaid stipulations, all and any warranty, indemnification and other claims attributable to defectiveness are deemed excluded.

- 7.4.** Asserting claims attributable to defects does not entitle to any reduction or to retention of the purchase price by the purchaser/principal.
- 7.5.** As far as Brucha GmbH assumes the warranty, they may – at their own discretion – either replace the defective object or the defective parts of such object with defect-free or rectify defects or issues a credit note corresponding to a price reduction to the benefit of the purchaser/principal. Rectifiable defects – even when essential – do not substantiate a basis for contract withdrawal by the purchaser/principal. Brucha GmbH is obliged to rectify such defects within reasonable time. Any costs exceeding the defect rectification are to be borne by the purchaser/principal.
- 7.6.** Warranty is deemed void when the goods have been improperly handled, assembled, or insufficiently maintained by the purchaser/principal, their staff, their agents, or third parties; this is also deemed applicable when repairs or modifications have been made by a third party or are attributable to installation of non-Brucha parts. Warranty coverage is deemed excluded regarding normal wear and tear as well as damages originating from force majeure (natural hazards, water damage, etc.).

Upon appearance of defects any arbitrary improvements made by the purchaser/principal, their staff or any third parties assigned by them result in waving all warranty and indemnification claims if Brucha GmbH has not been previously furnished the possibility to rectify such defects.

- 7.7. Brucha GmbH is deemed not liable for any recourse in terms of the article 933b of the Austrian Civil Code.
- 7.8. Brucha GmbH does not assume any liability or guarantee for obtaining authority permits regarding the purchase, delivery, installation, and/or assembly of their products. Brucha GmbH performs no legal examinations for design and construction. The purchaser/principal is responsible for such examinations.
- 7.9. In case of damages attributable to intentional or grossly negligent performance of the service to be rendered Brucha GmbH is deemed liable up to the total invoiced amount of the respective order. Any further claims for indemnification attributable to contractual infringements, contractual accessory obligations, infringement of duties during contractual negotiations and torts as well as further warranty claims are deemed excluded.
- 7.10. All other claims of the principal/purchaser or any third party, in particular claims to indemnification of any damages as well as liability of Brucha GmbH for their slight degree of negligence are deemed excluded.

8. CANCELLATION

Should the principal cancel an order already confirmed by Brucha GmbH, the principal undertakes to pay a cancellation fee amounting to 50 percent of the agreed price from the beginning of the detailed production planning respectively 100 percent of the agreed price from the point of production (without dispatch costs). Any claims of Brucha GmbH regarding already rendered services remain unaffected thereby.

9. INTELLECTUAL PROPERTY

Plans, drawings, and other technical documents as well as sample catalogues, folders, depictions and similar remain the intellectual property of Brucha GmbH under the relevant legal stipulations regarding reproduction, imitation and competition. The purchaser/principal shall use the services rendered by Brucha GmbH solely for the previously agreed purpose. Any other use exceeding the aforesaid must be agreed in writing. Concepts, strategies, and systems developed by Brucha GmbH are always solely prepared for a legally independent enterprise. Use through associated or affiliated companies must be separately agreed in the contract.

10. EXCLUSION OF COMPETITION CLAUSES

Brucha GmbH accepts no regulations regarding exclusion of competition and is expressly entitled to service purchasers/principals operating in the same business sector without any limitations.

11. EXCLUSION OF COMPETITION CLAUSES

- 11.1. The venue for all disputes arising directly or indirectly hereunder shall be the competent court in St. Pölten/ Lower Austria.
- 11.2. Michelhausen is deemed the place of performance for deliveries and payments, also when the handover was performed at a different, contractually agreed location.
- 11.3. The laws of Austria shall apply excluding any rules regarding conflicts of laws.

12. SEVERABILITY CLAUSE

- 12.1. Should individual stipulations hereof be or become void, the remaining stipulations shall remain in effect.