

BANDO EUROPE GmbH General Terms and Conditions (Version 01.07.2010)

§ 1 Scope of application and validity

1. The following General Terms and Conditions apply exclusively to all supplies of Bando Europe GmbH (Bando). Opposing or deviating conditions of the contracting party – in the following customer – will not become part of the contract. This shall apply even without an express objection or in case orders are accepted without reservation by Bando. Any deviations of this General Terms and Conditions have to be confirmed in writing by Bando.
2. Even if particular points in these conditions should have no effect in law, the contract shall nevertheless be binding. Where a separate delivery contract is made, all such points as are not set aside by special written agreement shall remain valid.
3. In case of doubt the German version of these General Terms and Conditions shall prevail over versions in other languages.

§ 2 Quotation and scope of delivery

Until confirmation of the order in writing, Bando's offers are not binding. Orders, ancillary agreements and amendments are invalid without the written confirmation of Bando. The extent of what is included in the delivery is governed by Bando's written confirmation.

§ 3 Prices and payment terms

1. Unless otherwise agreed in written form prices are effective ex-production facility or warehouse.
2. If costs of production change, and in particular the cost of manufacturing and auxiliary material, wages, salaries and freights etc., after the order or Bando's order confirmation has been issued and up to the time of delivery, Bando shall be entitled to modify the price quoted or agreed accordingly, and more than once if need be. Price increases of this kind shall not entitle the customer to withdraw from the contract.
3. The customer shall pay interest of 8 percent points above the respective basic interest rate from the due date, unless a higher damage is proved. Should a customer be more than 2 weeks behind hand with an instalment, the entire balance shall become payable forthwith.
4. The customer shall not be entitled to withhold payments or offset them against any counterclaims unless the counterclaim is undisputed or recognized by declaratory judgment.
5. The customer is not entitled to disclose prices and payment terms towards third parties.

§ 4 Delivery and delivery time

1. Unless otherwise agreed in written form the delivery time quoted shall not be binding. Delivery time starts with the receipt of the order confirmation, but not before the receipt of an agreed prepayment. The delivery time is kept if - before expiration of delivery time - the ordered delivery goods leave the production facilities / warehouse or if the information about readiness for shipment is made.
2. Delivery time shall be appropriately extended in the event of actions arising out of labour disputes – strikes and lockouts in particular – or of there being unforeseen hindrances beyond Bando's control, irrespective of whether these arise at the production facilities or warehouse of Bando or of its supplier or subcontractors, e.g. interruption of operation, production breakdowns, rejection of work, delay in the supply of essential raw materials, provided it can be shown that such hindrances have substantially affected the production or delivery of the item on order. The circumstances referred to above shall not be answered for by Bando if they arise during an already existing delay. In case of any consequence, Bando will inform the customer of the commencement and end of such hindrances earliest possible.
3. Adherence to the delivery date presupposes compliance by the customer with his contractual obligations.
4. Partial performance and delivery by instalments shall be permitted.

§ 5 Transference of risk

1. Unless otherwise agreed in written form the risk shall be transferred at latest when the deliveries are handed over to the forwarding agent, carrier or other person or undertaking specified for the handover.
2. Unless otherwise agreed in written form delivery and bill is made out in the customer's name. The goods will be ensured against breakage, conveyance and fire risks only at the request and for account of the customer.
3. Should shipment be delayed by circumstances for which the customer can be held responsible, the risk shall be transferred to the customer with the information about readiness for shipment.
4. Goods offered for delivery, even slightly defective, shall be received by the customer without prejudice to the rights arising out of § 6 (guarantee).

§ 6 Guarantee, customer's duties

1. The customer must examine the goods immediately after receipt and must give notice of obvious defects to Bando immediately, at latest within 8 days in written form. Other defects must be noticed to Bando in written form and immediately when they become visible. Otherwise, the goods delivered are treated as approved by the customer.
2. In any case the customer's warranty claims are subject to a limitation period of 1 year after delivery to the customer.
3. In case of notice of defects in time Bando is liable either to repair or replacement at the disposal of the customer. In case Bando does not have the claimed goods in normal stock, e.g. the goods are specially produced by third parties, the limit for repairs is prolonged at least to 2 months when receiving the written complaint. In case of all other repairs or replacement deliveries the time limit is 3 weeks on receiving the written complaint. Of the direct cost arising out of repairs or replacements, Bando will bear – provided the complaint proves to have been justified – the cost of any replacement parts, including carriage. Any other cost shall be borne by the customer.

4. The same guarantee shall apply to replacements and repairs as to the goods themselves.
5. Bando may refuse remedy defects if the customer fails to comply with the obligations laid upon him.
6. The customer shall have no further claims and in particular shall not be entitled to compensation for loss or damage other than the loss or damage of the goods supplied, except in the case of intent and gross negligence of Bando's management or vicarious agents.
7. No guarantee is made for defects, caused through inappropriate or improper use, defective assembly/putting into service through the customer or third parties, usual wear and tear, incorrect or careless treatment or excessive usage, unless they are caused through Bando's fault.

§ 7 Ownership condition

1. All goods supplied shall remain Bando's property until all claims (main and subsidiary) in respect of this or other deliveries have been paid. This shall also apply to any replacement parts delivered.
2. The customer shall neither pledge nor assign the goods for safe keeping nor otherwise encumber them. In the case of seizure, attachment or other measures taken by a third party the customer must inform Bando forthwith. The customer is liable for the costs of a third-party counterclaim proceeding.
3. Until paid for in full, the customer shall insure the goods delivered against loss or damage of any kind, for an appropriate sum and provide Bando at request with evidence of the insurance policy.
4. Processing or remodelling of the goods by the customer is always regarded as performed on behalf of Bando. In the case of the goods being processed, or remodeled or combined with other goods being the reserved property of third parties, Bando and the third parties shall get co-ownership of the new goods in proportion to the value of Bando's goods to the other goods at the time of the processing.
5. The customer is only allowed to sell the original products and the new products respectively within the ordinary course of business. The customer herewith assigns to Bando all future claims at the gross invoice amount agreed upon with Bando. The customer is authorized to collect these claims even after their assignment as long as he observes the terms of the contract, complying with his payment obligations towards Bando and is not in the danger of becoming insolvent. Otherwise Bando can demand that the customer indicates the assigned debts and the debtors, all data or particulars required for the recovery of the claims, submits all relevant documents and informs the debtors of such assignment. Bando is entitled to collect the whole outstanding amount from the debtors and set-off its amounts receivables against the money collected from the debtors.
6. Bando is obliged to release the securities at the customer's request or at the request of a third party which is impaired by Bando's exceeding securities, as far as their value exceeds Bando's claims to be secured by more than 10%.
7. As far as the national law of the country, where the goods remain, requires further steps for the validity of the retention of title, for example the registration with a registry, the customer has to perform them on his costs and has to deliver Bando proof of this.

§ 8 Withdrawal from contract

1. Should it be impossible for Bando to complete delivery before the transference of risk, the customer may withdraw from the contract. In case of repeating performance or delivery by instalments the customer is only allowed to cancel the single outstanding previous instalment.
2. Where delay in delivery occurs within the meaning of § 4, and if the customer should allow Bando - the firm thus being in default - an appropriate extension of time, expressly stating that he will refuse to take delivery when this has expired, then, in the event of Bando being to blame for failure to comply with this extension of time, the customer may withdraw from the contract.
3. Should the impossibility arise during delay in acceptance or should it be the fault of the customer, he shall still be liable to carry out his part of the contract.
4. The customer may also withdraw from the contract in the event of Bando's wrongfully allowing elapsing, without compliance, any reasonable extension of time allowed to it for remedying general defects for which Bando is liable under these Conditions or in the case of failure of the repair. The said reasonable extension of time shall not commence until the defect and Bando's liability therefore have been acknowledged or proven.

§ 9 Bando's right of rescission

1. In the event of delay in payment, Bando shall be entitled to rescind the contract after expiration of the deadline fixed for the payment and to claim for restitution of the delivered goods and for damage. In the case of rescinding the contract the customer shall compensate Bando not only for the loss of profit, the cost incurred and the use made of the goods supplied, but also for any reduction in value for which he is not responsible and other damages Bando is suffering from the customer's failure to perform.
2. In the event of unforeseen circumstances mentioned in § 4, para. 2 where these substantially alter the financial importance or content of the performance or have a considerable effect on Bando's enterprise, or if it should subsequently prove impossible to carry out the contract, Bando shall be entitled to withdraw partially or entirely from the contract. The customer shall not be entitled to compensation for such withdrawal. Should Bando make use of the right of withdrawal, it shall inform the customer accordingly, directly upon becoming aware of the full effect of the said circumstances, even where an extension of time for delivery has already been agreed upon with the customer.

§ 10 Competent court, place of fulfillment, applicable law

1. The place of fulfillment for deliveries and payments shall be Mönchengladbach. Place of jurisdiction is Mönchengladbach or at Bando's choice the customer's seat.
2. All disputes arising from this contract or its termination shall be settled in accordance with the laws of the Federal Republic of Germany excluding the rules of conflict of laws. The application of the United Nation Convention on Contracts for International Sale of Goods of April 11, 1980, shall be excluded.