

## **§ 1 Validity**

(1) All deliveries, services and offers are made solely according to our Standard Delivery Terms and Sales Conditions. They are an integral part of all contracts which we, B Laufenberg GmbH (hereinafter called „supplier“) conclude with our contractual partners (hereinafter named „buyer“) concerning offered products and services. They apply to all future deliveries, services and offers made by the supplier even if not expressly agreed again.

(2) Buyer or third party terms of business do not apply, even if the supplier does not explicitly exclude them. Even if the supplier refers to a letter which contains Terms and Conditions of the buyer or a third party this does not mean that the validity of these terms and conditions are accepted.

## **§ 2 Offers and Conclusions of Contracts**

(1) All offers made by the supplier are made subject to change and as non-binding offers, unless they are explicitly marked as binding or unless they contain a defined time limit for acceptance. Orders made by the buyer must be confirmed in writing by the supplier. Orders can be accepted by the supplier within 14 days after receipt of the order.

(2) Solely relevant for the privity of contract between the supplier and the buyer is the written contractual agreement including these Standard Delivery Terms and Sales Conditions. These reflect all agreements made between the contractual partners. Verbal agreements made by the supplier prior to the conclusion of the written contractual agreement are legally non-binding and verbal agreements between the contract partners are replaced by the written contract, unless it is expressly agreed that verbal agreements are to remain valid. Additions and amendments of the agreement including these Standard Delivery Terms and Sales Conditions must be made in writing. With the exception of the Managing Directors or the registered managers none of the supplier employees are authorised to agree verbally to any deviant agreements. Written communication is sufficient if sent by fax, telecommunication especially by e-mail is not acceptable.

(3) Supplier details concerning the delivery (e.g. weight, measurements, practical value, ratings, tolerances, and technical data), descriptions of the same (e. g. drawings and figures) as well as prototypes and sample rolls are only approximate, as long as these details were not required for a contractually agreed purpose or an exact compliance was promised by the supplier. They are no guaranteed characteristics of state, they are descriptions or identification marks of deliveries or services. Commercially accepted deviations and deviations which are based on judicial regulations or which represent technical improvements, as well as the replacement of component parts by parts of equal quality are permissible, as long as they fulfil the contractually defined purpose.

(4) Any printer's proofs, prototypes, specifications or samples related to the product or the packaging provided by the supplier to the buyer must be examined and accepted by the buyer, to ensure that they fulfil its requirements and are suitable for its applications. The buyer must accept and sign the documents and return them. Any required changes or corrections are to be marked clearly as such by the buyer.

(5) The supplier reserves the right of ownership and copyright on all offers, cost estimations, drawings and pictures, calculations, brochures, catalogues, models, work tools, samples and prototypes and all other documents and support material provided to the buyer. The buyer is not allowed to communicate, use or copy or show any of these items to any third party without the consent of the supplier. On the demand of the supplier all items must be returned to him and any copies made must be destroyed if they are no longer required for business matters or should any negotiations not lead to a contract.

(6) Layouts, sketches and other preparatory work ordered by the buyer can be invoiced by the supplier even if subsequently no contract is awarded by the buyer.

## **§ 3 Prices and Payment**

(1) Prices apply for the scope of delivery and service as listed in the order confirmation. Additional or special services will be invoiced separately. Our prices are quoted in EURO ex works, and do not include packaging, VAT, export customs duty and fees as well as any other public charges.

(2) As far as the agreed prices are based on the list price, and the delivery is planned for more than 4 months after the closing of the contract, the suppliers valid list price applies (minus an agreed percentage or defined rebate)

(3) Invoices are to be paid within 30 days of the date of the invoice with no cash discount or within 14 days with 2% cash discount unless otherwise agreed in writing. Decisive for the receipt of the payment is the receipt of the payment by the supplier. Cheques are classed as payment after redemption. Drafts will only be accepted after previous agreement and only on account of performance. If the buyer does not pay the invoice by the due date the outstanding amount will be payable with interest of 8 percent points above the basic interest rate per annum from the due date; the assertion of higher interest and additional damages in the case of arrears remains unaffected.

(4) The offset of counterclaims by the buyer or the retention of payments due to such claims is only acceptable if the counterclaims are indisputable or legally proved.

(5) The supplier is entitled to deliver outstanding deliveries or services only against pre-payment or against a security deposit if circumstances arise after the conclusion of the contract which show that the buyer's credit rating is low or that the payment of outstanding debts by the buyer could be at risk (this includes individual orders within a frame contract),

## **§ 4 Deliveries and Delivery time**

(1) Deliveries are made ex works.

(2) Supplier delivery dates and deadlines are only approximate dates unless an explicit date or deadline is agreed upon. If shipments are agreed all delivery dates and deadlines refer to the point of time at which the goods are handed over to the forwarding agent, freight carrier, or any other third party assigned to deliver the goods.

(3) The supplier can –irrespective of his rights on arrears – demand an extension or a postponement of delivery from the buyer should the buyer not fulfil his contractual duties on time. Should alterations be made to the confirmed order the delivery date is postponed accordingly for the supplier.

(4) The supplier is not liable for difficulties in delivery or delays in delivery if these are caused by an act of god or due to any other unforeseeable situation at the time of the contractual agreement ( e.g. disruption in business operations, difficulties in material or energy sourcing, transport delays, strikes, legal lock-outs, lack of workers, energy or raw materials, difficulties in the obtaining of regulatory approval, regulatory measures, or the failure, incorrect or delayed delivery of a supplier). If such events considerably hinder the supplier in his delivery and these problems are not only of a temporary nature, the buyer is entitled to withdraw from the contract. If difficulties are only temporary the delivery period is lengthened or delayed by the same period of time that the hindrance was experienced plus an appropriate production set up period. If the buyer can not be expected to accept the delivery due to the delays in the delivery he is allowed to withdraw from the contract if he informs the supplier without delay in writing.

(5) The supplier is only entitled to partial deliveries if:

- a partial delivery can be used by the buyer in the framework of the contractual agreement.
- the delivery of the remaining goods is secured and
- the buyer is not subject to additional work or additional costs (unless the supplier announces he is willing to bear any additional costs).

(6) Should the supplier fall behind schedule with deliveries or services or should a delivery become impossible for whatever reason, the accountability of the supplier for damages is limited to the stipulations of § 8 of these standard Delivery Terms and Sales Conditions.

## **§ 5 Place of execution, Dispatch, Packaging, passing of the risk, acceptance of delivery**

(1) The place of execution for all contractual obligations is Krefeld unless otherwise agreed. If the supplier is also responsible for the installation the place of execution is then the place where the installation is to be carried out.

(2) The type of dispatch and the packaging are subject to the best judgement of the supplier.

(3) The risk is transferred with the handover of the item (although the beginning of the loading is the relevant point of time) to the forwarding agent, freight carrier or any other third party assigned to deliver the goods. This applies also to partial deliveries or if additional services have also been accepted by the supplier (e.g. distribution or installation.) If the delay in the shipment is caused by a circumstance occurring due to the buyer then the risk is transferred to the buyer from the supplier on the day on which the supplier is ready to deliver the goods and as soon as he has informed the buyer.

(4) Storage costs after the passing of the risk are to be paid by the buyer. If stored by the supplier the storage costs amount to 0,25% of the invoice price of the products to be stored per week stored. The right for the enforcement and proof of additional or lower storage costs remains reserved.

(5) The shipment will only be insured by the supplier against theft, breakage, transport, fire and water damage or any other insurable risk if specifically requested by the buyer and only for his account.

(6) If an acceptance of the delivered goods is required then the goods are considered to have been accepted if:

- the delivery, and in the case of installation, the installation is complete,
  - the supplier has informed the buyer by noting the friction of acceptance according to this § 5 (6) and the supplier has required the buyers' acceptance.
- 12 days have passed since the delivery or installation and the buyer has begun to use the delivered items (e.g. the delivered facility has been put into operation and the delivered products have been used) and in such a case if 6 days have passed since the delivery or installation and,
- if the buyer failed to inform the supplier of any problems within an acceptable period of time or if the problem differs to any problem already communicated to the supplier.

## **§ 6 Warranty**

(1) The warranty period lasts for one year after delivery, or one year after the acceptance of the goods, if an acceptance of the goods is required. The supplier points out that due to the composition of the products they should generally be processed within 6 months after delivery. The supplier's storage advice should be observed.

(2) The delivered goods are to be examined thoroughly and without delay by the buyer or by an assigned third party. The examination must cover all essential and demanded features required for the use of the products. The products are considered to have been accepted if the supplier does not receive a claim of defects within 7 working days after delivery of the goods for any defects which are obvious following a routine examination of the products or within 7 days after noticing another defect while using the product – a claim must be made as defined in § 2 (2) S. 6 The obligation of the buyer to examine the delivered goods remains even if samples or type samples were provided. If specific samples of the products are sent with the delivery for the purpose of excluding all kinds of defects (both visible and hidden) then the buyer must examine these samples and report any defects to the supplier within 7 days. If requested by the supplier the delivery is to be returned carriage free to the supplier. If the claimed defects are legitimate the supplier will reimburse the buyer of any transport costs up to an amount of the least expensive dispatch route; this does not apply if transport costs are higher because the delivery was not at the contractually agreed place.

(3) In the case of material defects of the delivered goods the supplier may choose, within an acceptable period of time, whether he wishes to complete a replacement delivery or improve the delivered goods. In case this remedy or new delivery fails due to impossibility, unreasonableness and refusal or due to an unreasonable delay of remedy or replacement delivery for the buyer he is allowed to withdraw from the contract or to reasonably reduce the price.

(4) Excess or short deliveries that deviate in weight or area can not be avoided in the production process. They do not represent poor performance or defects if within the following parameters

- up to 99 kg or 999 m<sup>2</sup> +/- 50%
- from 100 – 999 kg or 1.000 m<sup>2</sup> - 9.999 m<sup>2</sup> +/- 30%
- from 1.000 kg – 4.999 kg or 10.000 – 59.999 m<sup>2</sup> +/- 20%
- more than 5.000 kg or more than 60.000 m<sup>2</sup> +/- 15%

In the case of excess or short deliveries the actual amount of delivered product will be invoiced.

(5) If a defect is the responsibility of the supplier the buyer can, in case of premises according to § 8, claim for damages.

(6) If the defect is found in a part from another manufacturers, which the supplier can not deal with due to licensing rights or for other reasons, the supplier will either claim warranty rights against the manufacturers for the account of the buyer or will recede his rights to do so to the buyer. Warranty claims against the supplier exist with these described defects under normal circumstances and under these standard Delivery Terms and Sales Conditions only if claims made legally and directly to the manufacturer were unsuccessful, or were futile for instance due to a bankruptcy. During the legal dispute the expiry of period of limitation concerning the warranty rights will be suspended.

(7) The warranty does not apply if the buyer alters the delivered product or allows the product to be altered by a third party without the permission of the supplier and in so doing makes the repair of defects difficult or impossible. In such a case the buyer must bear the additional cost of improvement of the product.

(8) In case of products manufactured for the buyer under a contacted-out agreement the supplier accepts no responsibility for defects of any preliminary products delivered to him by the buyer or at the instigation of the buyer..

(9) In individual cases of deliveries of used goods agreed to by the buyer are excluded from any guarantee.

## **§ 7 Industrial Property Rights**

(1) Under § 7 the supplier vouches for his products and is responsible to ensure that his deliveries do not affect the industrial property rights or trademark rights of any third party. Each contract partner will inform the other partner in writing without delay should any demands be made upon them due to the infringement of any of these rights.

(2) Should a product infringe on any industrial property rights or copyrights of a third party then the supplier may choose whether he wishes to alter or exchange the products, at his cost, so that the rights of a third party are no longer affected. In this case the products must still fulfil the contractually agreed functions. Alternatively the supplier may reach a licensing agreement enabling the buyer to the usage rights. If the supplier does not succeed in doing this within an acceptable period of time, the buyer is authorised to withdraw from the contact or to reasonably reduce the agreed price. Any claims by the

buyer for damages are subject to the limitations of § 8 of these standard Delivery Terms and Sales Conditions.

(3) If products delivered by the supplier but produced by another manufacturer cause rights violation the supplier may choose whether to assert his rights against the manufacturer and sub-contractors for the account of the buyer or whether he wants to cede his rights to the buyer. In this case claims against the supplier only apply within the boundaries of § 7 if legal implementation of the afore mentioned claims against the manufacturer were unsuccessful or futile, due to e.g. an insolvency.

#### § 8 Liability and compensation due to default

(1) The liability for compensation of the supplier, irrespective of legal grounds, especially due to impossibility, delay, bad or wrong delivery, breach of contract, breach of duties during contract negotiations and any unlawful act, is limited according to this § 8 as far as default is required.

(2) The supplier is not liable for

a) slight negligence by the managerial board, by legal representatives, employees or assistants.  
b) gross negligence of his employees or other people not in a managerial position, as long as the violation does not refer to essential contractual obligations. Essential contractual obligations are the obligations which are required for the timely, correct delivery and installation, as well as the communication of advice required by the buyer to ensure the correct and safe use of the product and the security of his employees or any third party.

(3) Should the supplier be liable for damages according to § 8 (2), then this liability is limited to damages which the supplier anticipated at the time of the closing of the contract, or which he should have anticipated as a result of due diligence. Indirect and consequential damages that are caused by defects of the delivered products are only eligible to be replaced if the damage was to be expected from the intended use of the product.

(4) In the case of liability for slight negligence the suppliers liability to pay damages for material and personal injury is limited to EUR 10 Mio. per liability case (corresponding to the limit of indemnity of his product liability insurance or public liability insurance), even if it corresponds to a breach of contract.

(5) The previous exclusions and limitations of liability apply on the same scale in favour for the managerial board, legal representatives, employees and any other people used by the supplier.

(6) If the supplier provides technical advice or support over and above the agreed service level, he does not charge for and any liability claims are excluded.

(7) The limitations of § 8 do not apply for the liability of the supplier against intentional acts, for guaranteed product characteristics, against damage to life, body or health or according to the product liability act.

#### § 9 Reservation of proprietary rights

(1) The following agreed reservation of property rights is the basis for the security of all present and future financial claims of the supplier against the buyer according to the contractual agreement between the two parties concerning the delivery of siliconized paper and foil (including payment balance requests on a current account limited to this delivery agreement).

(2) All products delivered to the buyer remain the property of the supplier until complete payment of all accounts has been made. All goods to which the reservation of property rights applies will now be referred to as reserved property.

(3) The buyer stores products which are considered to be reserved property at no cost.

(4) The buyer may use and process the reserved property in his usual business processes (paragraph 9). The buyer is not entitled to pledge or assign the reserved property as a security.

(5) Should the reserved property be processed by the buyer it is agreed that this happens in the name and for account of the supplier as manufacturer and that the supplier acquires ownership in the new products or co-ownership in the new products in proportion to the value of his reserved property. Should there be no acquisition of property by the supplier in the above mentioned manner the buyer

transfers his future ownership or co-ownership of the new products as a security to the supplier. If the reserved property is processed in such a way that it can no longer be separated from the newly produced product then the buyer transfers his co-ownership (as long as the main part of the product belongs to him) in proportion to the value of the reserved property to the supplier.

(6) In case of selling-on the reserved property the buyer assigns the resulting claims against the purchaser of the reserved property or in case of co-ownership his share of co-ownership to the supplier. The same applies to other receivables that are connected to the reserved property (i.e. insurance claims). The buyer authorizes the supplier precariously to collect the assigned receivables in his own name and to his own account.

(7) Should a third party seize the reserved property, especially through garnishment, the buyer is obliged to immediately inform the third party about the reserved property status. Furthermore he must also inform the supplier to enable him to assert his ownership rights. Should the third party not be in a position to reimburse the supplier of any judicial or extra judicial costs then the buyer is liable to bear these costs.

(8) The supplier will release to him assigned rights on demand at his own choice if the value of the secured rights will exceed the value of the reserved property by more than 50 %.

(9) Should the supplier withdraw from a contract due to a breach of contract on behalf of the buyer, particularly with regard to delayed payment, then he is entitled to demand the return of his reserved property.

#### § 10 Other Terms

(1) The supplier reserves the right to attach company texts, company logo, or company identification number to all deliveries in line with corresponding regulations.

#### § 11 Final Clause

(1) The court of jurisdiction for any disputes arising from the business connections between the supplier and the buyer is, if chosen by the supplier, Krefeld, or the domicile of the buyer. For any legal proceedings against the supplier the exclusive court of jurisdiction is Krefeld. Imperative laws concerning exclusive courts of jurisdiction remain unaffected by this regulation.

(2) The contractual agreement between the supplier and the buyer are subject solely to the law of the Federal Republic of Germany. The UN Convention on contracts for the International Sale of goods (CISG) from 11 April 1980 does not apply.

(3) Should the contract or these Standard Delivery Terms and Sales Conditions contain any loopholes, then the lawful effective regulations are classed as applying which the contract partners would have agreed upon to fulfil the contract economically, and to fulfil the stipulations of these Standard Delivery Terms and Sales Conditions had they been aware of any loopholes.

(4) The buyer is advised that the supplier saves data from the contractual relationship according to § 28 of the German Data Protection Act. The supplier reserves the right to forward data to a third party if required to fulfil contractual purposes (e.g. for insurance purposes.)

#### Applicable Version

In cases of doubt, the German Version of these Standard Delivery Terms and Sales Conditions (Allgemeine Lieferbedingungen der B. Laufenberg GmbH) shall apply.

**Innovative Silikonssysteme  
auf Papier und Folie**

[www.b-laufenberg.de](http://www.b-laufenberg.de)

