

# General Terms and Conditions of Sale and Delivery (GTCS D) of Hans Brunner GmbH March 2015 edition

*This is a translated version from the original German version of the "Allgemeine Verkaufs- und Lieferbedingungen (ALB)" of the Hans Brunner GmbH. If there are any differences between the understanding of these GTCS D and the German original version the latter prevails and is controlling.*

## § 1 Scope

1. In addition to other contractual agreements, these GTCS D shall exclusively apply to all transactions between us and the purchaser or customer, hereinafter known as the Customer. Even if the service is provided or payment accepted, we shall not acknowledge other terms issued by the Customer unless we expressly agree to their being valid in writing.

This shall also apply to general terms and conditions of business other than the Customer's general terms and conditions of purchase, in particular but not limited to quality assurance agreements, customer-provided components contracts, consignment warehouse contracts and confidentiality agreements.

2. These GTCS D shall only apply to transactions with enterprises in the sense of § 14 of the German Civil Code [BGB].

3. These GTCS D shall also apply to all future business relationships without their having to be included until such time as we produce new GTCS D.

4. All agreements made between us and the Customer as part of contract negotiations must be set out in writing for verification purposes and must be confirmed by both parties.

5. Side-agreements, retrospective contract amendments and the acceptance of a guarantee, particularly assurances of properties or the acceptance of a purchasing risk must be made in writing if they are made by persons who have no rights of representation.

## § 2 Advice

1. Our product and service-related advice shall only extend to the products supplied by us and services provided by us.

It shall not extend to advice outside of the contract, in other words to statements which are made without products being sold or services provided by us.

2. Our advice services are based on empirical values. Our advice shall be non-binding if it extends to circumstances where we simply cannot know whether items are correct, in other words, for example the composition of the raw material or the work carried out by sub-contractors.

Failure to make statements shall not constitute advice.

## § 3 Contract conclusion

1. Our quotations shall be non-binding, they shall be regarded as a request to submit a quotation.

If we have prepared a quotation specifically for the Customer, we shall be bound to it for a period of 30 days.

2. The initial charge for processing a quotation shall generally be zero. Additional quotations and design work shall only be free if the contract of supply is valid and remains so.

3. Descriptions and images of our goods and products in technical documents, catalogues, brochures, circulars, advertisements and price lists shall be non-binding unless their inclusion in the contract has been expressly agreed; they shall not release the Customer from conducting its own inspections.

Descriptions of products and services on the internet can naturally only be of a general nature; if the Customer wishes to use them to derive binding property agreements or the suitability for use of said products or services for its application, it must make reference to this in the purchase order.

4. In principle the order issued by the Customer shall be regarded as an offer to conclude a contract.

5. All the details for completing the order must be set out in the order. This applies to all goods, works and other services to be provided by us. These shall particularly, but not exclusively, include details of item designation, quantity, dimensions, material, material composition, pre-treatment, processing specifications, treatment guidelines, storage, standards and all other technical parameters and characteristic physical data.

Missing, incorrect or incomplete details shall be regarded as expressly not agreed and shall not give rise to any obligations on our part, either in the sense of fulfilment and warranty or in the sense of compensation claims.

6. If the order issued by the Customer differs from our quotation, the Customer must specially highlight the differences.

7. We shall be entitled to obtain further information for the purpose of ensuring that the order can be completed properly.

8. Orders should be issued in writing or electronically (EDI); orders placed orally or by telephone shall be completed at the Customer's risk.

9. If the Customer cancels an order which has already been accepted by us, we shall be entitled to charge 10% of the price for the goods or services for the costs incurred by processing the order and for loss of profit, notwithstanding the possibility of claiming higher actual damages. The Customer shall be at liberty to provide evidence that our costs were in fact less than this.

10. We shall accept the quotation within two weeks unless a different acceptance period has been agreed.

11. Our services are set out in the order confirmation.

12. We reserve the right to process the goods or services or to have them processed at a different plant at no added cost to the Customer.

## § 4 Modifications

1. A separate contractual agreement shall be required for any modifications to the goods or services requested after the contract has been concluded.

2. We reserve the right to modify the goods or services within reason in the event that we have not received the required information or have received incorrect information. Negative effects caused by a lack of or incorrect information, in particular additional costs or damages, shall be paid by the Customer.

3. We reserve the right to make technical modifications to the goods or services which do not jeopardise the objective of the contract.

4. Part consignments and part services shall be permitted as long as this does not jeopardise the objective of the contract. They may be invoiced separately.

## § 5 Lead time

1. If a lead time has been agreed for the goods or services, this shall commence when we send our order confirmation but not before all details of the order have been clarified and all the Customer's duties of cooperation have been fulfilled properly; the same shall apply to delivery dates for the goods or services.

2. In the event of mutually agreed modifications to the goods or services, new lead times and delivery dates for said goods and services must be agreed.

This shall apply even if fresh negotiations are held about the goods and services after the contract has been concluded without any modification being made to the goods or services.

3. Lead times and delivery dates for the goods and services are agreed subject to the raw materials being supplied to us in perfect condition and promptly and that no unforeseeable production problems are encountered.

4. The lead time for the goods or services shall be deemed to have been met if the goods or services have left our plant by the elapse of the lead time or have been handed over to the transport contractor at our plant or we have notified the Customer that the goods or services are ready for collection.

5. We shall be entitled to deliver the goods or complete the service before the agreed date.

## § 6 Acceptance delay

1. If the Customer fails to accept the goods by the agreed delivery date or lead time for reasons that are its responsibility, we may demand compensation for any additional costs we incur as a result.

In particular we shall be entitled to charge the Customer storage costs of 0.5% for every month or part of a month, subject to a maximum total of 5% of the price for the goods or services. Either of the parties to the contract shall be entitled to provide evidence that the actual storage costs were higher or lower than this figure.

2. Furthermore, we shall be entitled to select a suitable storage site at the expense and risk of the Customer and to insure the goods or services at its expense.

3. If we are entitled to demand compensation rather than the completion of the service we may demand 15% of our price as compensation, notwithstanding the possibility of demanding

higher actual damages, unless the Customer can provide evidence that we have not suffered any damages or our damages were considerably lower than this lump sum.

### **§ 7 Forces majeures**

In cases of forces majeures, our lead times and delivery dates shall be extended by the duration of the problem which has occurred.

These shall include circumstances which occur but for which we are not responsible such as war, fire damage, strikes, lock-outs, traffic problems, official orders, plant shut-downs or major operating problems such as lack of material or energy suffered by us and our sub-contractors and suppliers. This shall apply even if we were already in default when these circumstances occurred.

We shall notify the Customer without delay of the start and end of such problems.

If the goods or services are delayed by more than six weeks, both the Customer and we shall be entitled to cancel the contract relating to the scope of the contract affected by the delay. Compensation shall not be payable to the parties to the contract as a result of such circumstances.

### **§ 8 Terms of payment**

1. Unless otherwise agreed, all prices shall be understood in euros, net on an "ex-works" basis, exclusive of value-added tax. Additional costs such as packaging, freight, shipment costs, customs duties, assembly, insurance and bank charges shall be charged separately.

We shall only provide insurance cover for the goods during shipping at the request and expense of the Customer.

2. We shall be entitled to change the agreed price within reason in the event that increases in costs, in particular due to material price changes, occur after the conclusion of the contract. We shall provide the Customer with evidence of the reason for the change of cost on request.

3. We shall be entitled to change the price within reason if changes occur before or during the completion of the order because the information provided by the Customer and the documents supplied by it were incorrect or the Customer requests other modifications.

4. We shall be entitled to demand a reasonable advance payment when the contract is concluded. Interest shall not be payable on this.

5. Unless otherwise agreed, invoices shall be payable within 30 days of the invoice date on a strictly net basis. They shall be payable without any deductions. In the event that they are not paid, the Customer shall be in default on the due date without this requiring any further warnings.

Discounts and concessions shall only be granted by special agreement.

Part payments shall require separate written agreement.

6. If the Customer has several outstanding invoices from us and if payments are not made by the Customer against a specific invoice, we shall be entitled to decide to which of the outstanding invoices it shall be assigned.

7. In the event of default, forbearance or part payment, we shall be entitled to charge normal bank interest but at least at a rate of 8 percentage points per annum above the relevant base rate and to withhold further goods and services until all outstanding invoices have been settled. We reserve the right to provide evidence that we suffered higher damages.

8. By placing the order the Customer confirms that it is solvent and creditworthy.

If there is justified doubt about the solvency or creditworthiness of the Customer, for example due to repeated late payments or default, we shall be entitled to demand security or cash payment on a quid pro quo basis as the service is provided. If the Customer fails to meet this demand within a reasonable deadline which has been set for it, we shall be entitled to cancel the non-fulfilled part of the contract. No such deadline shall be required if the Customer is clearly incapable of providing security, for example if an application has been made to open insolvency proceedings against the Customer's assets.

9. The Customer shall only be entitled to set off against our claims if its counter-claim is undisputed or has been fixed by a court of law.

The assignment of debts payable to us shall require our consent.

10. The Customer shall only have a right of retention if the counter claim is based on the same contract and has been acknowledged or fixed by a court of law or if we commit a major breach of our duties from the same contract despite receiving a written warning and we have not offered reasonable safeguard.

If a service provided by us is undisputedly defective, the Customer shall only have a right of retention for a reasonable amount relative to the defects and the likely costs for their rectification.

11. The payment deadlines shall remain in force even if delays occur to the delivery through no fault of ours.

12. If value-added tax is not included in our invoice, in particular because we have assumed that the goods have been supplied or the services provided on the basis of a "single market transaction" in the sense of § 4 No. 1 b together with § 6 a of the German Value-Added Tax Law [UStG], and we are retrospectively charged with a value-added tax debt (§ 6 a IV of the Value-Added Tax Law), the Customer undertakes to reimburse us with the amount which has been charged to us. This duty shall apply regardless of whether we are retrospectively charged with value-added tax, import value-added tax or comparable taxes in Germany or elsewhere.

### **§ 9 Transfer of risk, packaging**

1. The place of fulfilment for the services and payments specified in the order shall be our registered office.

2. The Customer undertakes to complete an acceptance procedure as soon as we have notified it that the services it ordered have been completed.

If the Customer does not complete this acceptance procedure within two weeks of such notification, the services shall be deemed to have been accepted.

3. The risk of accidental destruction, loss or damage to the goods shall be transferred to the Customer when we notify it that the goods are ready.

If shipment has been agreed, the risk shall be transferred to the Customer when the goods are dispatched or they have been handed over to the transport contractor.

4. Unless agreement has been made to the contrary, we shall determine the type and scope of packaging. Single use packaging must be disposed of by the Customer.

5. If the goods are shipped in loaned packaging, the packaging must be returned free of charge within 30 days of receiving the shipment. The Customer must pay compensation for any loss of or damage to the loaned packaging.

Loaned packaging must not be used for any other purposes or for holding other goods. They may only be used for transporting the supplied goods. Labels on loaned packaging must not be removed.

6. In the event of the goods being damaged or lost en route, the Customer should carry out an inspection immediately and notify us of the results. Claims relating to any transport damage must be made without delay to the forwarder by the Customer.

### **§ 10 Duty to inspect and complain**

1. The Customer undertakes to inspect the supplied goods pursuant to § 377 of the German Commercial Code [HGB] or equivalent foreign national or international regulations immediately after delivery and to notify us without delay of any defects and damage identified either then or later. Otherwise the shipment shall be assumed to have been approved as perfect. The provision of § 377 of the Commercial Code shall apply as and where appropriate for general and works services. Complaints must be made in writing. A complaint in text form, for example by email, shall be inadequate.

The Customer shall provide us with one or more parts from the shipment concerned without delay.

2. Defective goods or services must not be used. If it was not possible to detect a defect on receipt of the goods or after the provision of the service, all further use of the goods or services must be stopped immediately after the discovery of the defect.

3. The Customer shall send us the defective goods and shall provide us with sufficient time to inspect the defect. In the event of unjustified complaints, we reserve the right to charge the Customer with the inspection costs we have incurred.

4. The complaint shall not exempt the Customer from its duty to comply with its payment obligations.

### **§ 11 Warranty**

1. If our goods or services are suffering from a defect, we shall be entitled at our discretion to rectify the defect, supply replacement goods or provide the Customer with a credit note within a reasonable period of time.

2. Claims by the Customer relating to the costs required for the purposes of repeat fulfilment, in particular transport, travelling, labour and material costs shall not be permitted if these costs are increased because the goods were subsequently transported to a place other than the Customer's site.

3. The same warranty provisions shall apply to replacement services and refinished goods as for the goods or services supplied originally.

4. Assurances for specific properties of the service or goods must be confirmed in writing.

#### **§ 12 Deficiencies in Title**

1. Orders based on drawings, sketches or other information supplied to us shall be completed at the risk of the Customer. If we breach intellectual property rights owned by third parties as a result of such purchase orders, the Customer shall exempt us from claims by the owners of such rights. The Customer shall be responsible for all further damages.

2. Our liability for any breaches of intellectual property rights which relate to the use of the goods or services or to the connection or use of the goods or services with other products shall be excluded.

3. In the event of legal defects we shall be entitled, at our discretion:

- To obtain the required licences relating to the breached intellectual property rights

- or to rectify the defects on the goods or services by providing goods or services which have been modified to an extent which is reasonable for the Customer to accept.

4. Our liability for breaching third party intellectual property rights shall only extend to such intellectual property rights which have been registered and published in Germany.

#### **§ 13 Liability**

1. We shall be liable for the liabilities of the company only with the company's assets.

2. In the event of simple negligence we shall only accept liability for a breach of a major contract duty. For gross negligence we shall also accept liability for breaches of non-major contract duties.

In the above cases liability shall be limited to the foreseeable damages which are typical for these contracts.

In the case of warranted characteristics, our liability shall be limited to the scope and the amount of our product liability insurance policy. The scope of the cover conforms to the non-binding recommendations for product liability insurance issued by the Gesamtverband der Deutschen Versicherungswirtschaft (German Insurance Association). The level of coverage for the claims set out in the insurance policy shall be EUR 2 million per insurance year.

3. Compensation claims due to a malicious breach of contract duties by us, claims for bodily injuries and claims under Product Liability Laws shall be subject to the statutory regulations.

4. We shall accept liability for tortious claims under our contractual liability; restrictive liability agreements from the contract shall also apply for dealings with the Customer.

5. All liability other than that described in the provisions above shall be excluded.

6. Recourse claims on the part of the Customer against us shall only exist as long as the Customer has not made any agreements with its clients which go beyond the statutory defect and compensation claims.

7. Our liability shall be excluded if the Customer has effectively limited its liability to its own clients.

8. If our liability is excluded or limited, this shall also apply to the personal liability of our staff, workers, colleagues, representatives, agents and vicarious agents.

9. If liability is excluded or limited under the provisions set out above, the Customer also undertakes to indemnify us from claims by third parties.

10. The statutory provisions shall otherwise apply.

11. The Customer undertakes to notify us in writing without delay of any claims lodged by third parties and to reserve our right to use all possible means of defence and settlement negotiations.

#### **§ 14 Statute of limitations**

1. The statute of limitations for claims and rights relating to defects affecting our products and services and resultant damage shall be one year. The start of this statute of limitations period is based on the statutory regulations.

The above statute of limitations reduction shall not apply if the law specifies longer periods in cases pursuant to §§ 438 Para. 1 No. 2, 479 and 634 a Para. 1 No. 2 of the German Civil Code [BGB].

2. The statute of limitations set out in number 1, sentence 1 above shall also not apply in cases of malice if we have deliberately not told you about the defect or have guaranteed a specific property, or for compensation claims due to bodily injuries or

loss of freedom of a person, for claims under the Product Liability Law and for a grossly negligent breach of duty.

3. Refulfilment action shall not interrupt the statute of limitations for the original provision of the service nor shall it cause the statute of limitations to restart.

#### **§ 15 Transfer of title**

1. We reserve title to all contract goods until all our claims from our business relationship with the Customer have been settled in full.

We reserve all title rights and copyrights to supplied illustrations, drawings, calculations and other (technical) documents.

2. If our property is processed, connected or mixed with property owned by others, we shall acquire title to the new item as set out in § 947 of the Civil Code.

3. If the processing, connection or mixing takes place in such a way that the third party property is regarded as the main item, we shall acquire title as a proportion of the value of our goods or services to the other goods or services at the time of the processing, connection or mixing.

4. If we acquire title to an item as a result of our goods or services, we shall reserve title to this item until all outstanding claims from our business relationship with the Customer have been settled in full.

5. The Customer undertakes to keep the reservation of title goods safely and, if necessary, to complete any servicing and maintenance work at its expense promptly. The Customer must insure the reservation of title goods at its own expense against loss and damage. Any security claims accrued in the event of damage must be assigned to us.

6. The Customer shall be entitled to resell the item which is our (joint) property as part of its normal business as long as it fulfils its duties from its business relationship with us. In this event a proportion of the claim resulting from the sale shall be assigned to us to cover the value of the reservation of title services provided by us to the total value of the sold goods. The Customer shall retain entitlement to collect this claim even after this assignment. Our authority to collect these claims ourselves shall not be affected.

7. The right on the part of the Customer to dispose of the goods subject to our reservation of title and to collect the claims assigned to us shall become null and void as soon as the Customer fails to meet its payment duties or an application is made to open insolvency proceedings against its assets. In the above cases and in the event of any other action by the Customer in breach of the contract, we shall be entitled to take back any goods supplied with reservation of title without notice.

8. The Customer shall notify us without delay if there are any risks to our reservation of title goods, particularly in the event of insolvency and enforcement action. At our request the Customer must provide all the required information about the goods which are our (joint) property and about the claims assigned to us and must notify its clients of said assignment. The Customer shall provide us with support in all action required to protect our (joint) property and shall pay the costs of any such action.

9. We shall have a right of seizure for all the Customer's goods which are in our possession due to the contract to cover all our claims from the contract. This right of seizure may also be used for claims from goods or services supplied earlier if they are linked to the goods or services in question.

The right of lien shall apply to other claims from our business relationship as long as they are undisputed or have been fixed by a court of law. §§ 1204 ff. of the Civil Code and § 50 Para. 1 of the German Insolvency Regulation shall apply as and where appropriate.

10. If the realisable value of the securities exceeds our claims by more than 15%, we shall release securities covering the excess value at our discretion at the request of the Customer.

#### **§ 16 Tools**

1. If special tools are required to complete the order, unless otherwise agreed we shall become and remain the owner of the tools manufactured by us or by a third party engaged by us even if the Customer has paid part of the costs of the tools.

2. If expressly agreed, the tools shall only be used for orders placed by the Customer as long as the Customer meets its payment and acceptance undertakings. We shall only be obliged to maintain and replace these tools free of charge if such action is required to fulfil a production quantity which has been guaranteed to the Customer. An undertaking to store the tools shall expire two years after the last delivery of parts made using the tools and after prior notification of the Customer.

3. The share of the tool costs shall be shown separately in the

quotation and in the order confirmation; they shall be payable on a net basis when the contract is concluded. In addition, information should be provided therein whether and how any shares of the tool costs that have been paid will be amortised.

4. If it has been agreed that the Customer will become the owner of the tools, title to them shall pass to the customer after the purchase price for the tools has been paid. The handover of the tools to the Customer shall be replaced by our duty of safekeeping for the tools. Regardless of the statutory claim for the tools to be handed over to it and of the service life of the tools, we shall be entitled to maintain sole possession of the tools until the acceptance of an agreed minimum quantity by the Customer or until after the elapse of a certain period of time. We shall mark the tools as the property of a third party and insure them at the request of the Customer and at its expense.

5. If the Customer's own tools as described in paragraph 4 are used or if the Customer provides the tools on a loan basis, our liability relating to the safekeeping and care of the tools shall be limited to the same duty of care as would apply if we owned the tools. The costs of maintenance and insurance shall be paid by the Customer. Our obligations set out in this § 16 shall become null and void if, after the completion of the order, a request is sent to the Customer to collect the tools and the Customer fails to collect them within 14 days after the request is made.

6. If the Customer fails to meet its contract obligations in full, we shall be entitled to exercise a right of retention to the tools.

#### **§ 17 Customer-provided materials**

The following provisions shall also apply if the Customer supplies us with materials for processing.

1. The goods for processing will only be inspected for defects and damage which are externally visible when we receive them. We shall not be obliged to conduct any other inspections. Any defects or damage found will be reported to the Customer within 10 working days of the discovery of the defect.

2. The goods supplied to us must be made of easily machinable material with normal properties so that normal machining is possible. If these requirements are not satisfied, we shall notify the Customer of the additional work required and the resulting increase in price.

If the Customer does not agree to the change in price, it shall be entitled to cancel the contract. This cancellation must be made immediately upon receipt of our notification about the changed circumstances. If the Customer decides to cancel the contract, it must make reasonable payment for the work already completed.

3. The production and preparation of special equipment, such as clamping equipment, shall be charged separately.

4. If the goods supplied by the Customer are unusable as a result of material flaws, we must be reimbursed with the processing costs we have incurred.

5. We shall not be liable for damage caused by inaccurate wording and identifiers on the goods supplied by the Customer.

6. The Customer undertakes to reimburse us with all damages, including loss of profit, which we incur as a result of our being supplied with material which is not suitable for processing.

7. We shall not make any compensation for waste incurred up to the level which is accepted as standard in the industry.

#### **§ 18 Confidentiality**

1. The Customer undertakes to treat all aspects of the business relationship which require protection in confidence. In particular, it shall treat all commercial and technical details which are not part of the public domain and which come to its attention as a result of the business relationship as confidential. Information or aspects of the business relationship which were already part of the public domain at the time of their disclosure shall not come under the confidentiality obligation nor shall information or aspects of the business relationship for which the party to the contract can provide evidence to the effect that it already knew the information before the disclosure of it by us.

The Customer shall ensure that its personnel shall also be subjected to appropriate confidentiality agreements.

2. The documents provided to the Customer may only be copied if required for operational requirements and in accordance with copyright regulations.

3. All documents may not be disclosed to third parties in full or in part or used for purposes other than those for which they were supplied to the Customer without our written consent.

4. The disclosure even in part of the business relationship with us to third parties shall only be possible with our prior written consent; the Customer shall subject the third parties to a confidentiality agreement of the same type and scope.

5. The Customer may only advertise its business relationship with us with our prior written consent.

6. The Customer undertakes to maintain this confidentiality even after the end of the business relationship.

#### **§ 19 Place of jurisdiction and applicable law**

1. The place of jurisdiction shall be Munich or the Purchaser's place of jurisdiction at our discretion.

2. The laws of the Federal Republic of Germany shall be exclusively applicable to our business relationships with the Customer. The applicability of the CISG "United Nations Convention on Contracts for the International Sale of Goods" shall be excluded.

3. If individual parts of these GTCSD are invalid, this shall not affect the validity of the other provisions. The parties to the contract shall make every effort to replace the invalid provision with another provision which comes as close as possible to the commercial aim and legal sense of the original formulation and complies with the relevant statutory regulation.

4. We shall be entitled to process data in accordance with the German Federal Data Protection Law.

#### **§ 20 Contact data**

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Commercial Register No. HRB 75389

VAT Registration No. DE236/219/382

Tax registration No. 114/128/10173