

## **General Terms and Conditions of Sale and Delivery of Boway Deutschland GmbH**

### **§ 1 Scope, data protection**

- (1) If the customer is an entrepreneur in terms of § 14 of the German Civil Code (BGB), exclusively the following General Terms and Conditions in the version valid at the time of the order shall apply to the business relationship between us and the customer.
- (2) An entrepreneur is a natural or legal person or a partnership with legal capacity who, when concluding a legal transaction, acts in the exercise of his or her commercial or independent professional activity. A legal partnership is a partnership endowed with the capacity to acquire rights and enter into liabilities.
- (3) We deliver and perform in accordance with these general terms of delivery and our written order confirmation. We do not recognise any deviating conditions of the customer unless we have expressly agreed to their validity in writing.
- (4) Acceptance of the delivered goods shall be deemed to be acceptance of our terms and conditions.
- (5) Insofar as necessary for business purposes, we are authorised to store and process the customer's data by EDP within the applicable data protection laws.

### **§ 2 Offers, amendments, trade clauses**

- (1) Our offers are subject to change; a contract is only concluded by our order confirmation in text form (§ 126b BGB) or when orders have been executed by us. All taxes and/or other charges incurred for our deliveries and services in the country of receipt shall be borne by the customer, unless expressly agreed otherwise in writing.
- (2) Amendments, supplements and/or the cancellation of a contract or these terms and conditions must be made in text form.
- (3) Insofar as trade terms according to the International Commercial Terms (INCOTERMS) have been agreed, INCOTERMS 2010 shall apply.
- (4) In the event of a significant change in our processing costs and or unforeseeable transport costs, we may apply an appropriate price adjustment.
- (5) Metal price fixings cannot be subsequently changed.
- (6) Unless expressly agreed otherwise in writing, the purchase price is payable 30 days after the invoice date. We are also entitled to send invoices in electronic form. As consent to the sending of invoices electronically, it is necessary that the parties actually practice this procedure and approve it by silence implies consent.
- (7) Payment terms shall run from the invoice date; the date of receipt of payment shall be decisive for compliance with any payment term.
- (8) Costs and expenses shall be borne by the customer. We accept bills of exchange only after prior agreement.
- (9) We may determine against which of our claims incoming payments shall be offset. The crediting of bills of exchange and checks is subject to encashment. From the

due date, we shall be entitled to charge interest on arrears at a rate of 8% above the respective prime rate published in the German Federal Gazette. Offsetting and retention by the purchaser are only permissible if the counterclaim has been legally established or is undisputed.

If the performance of the contract is endangered by the Purchaser's inability to pay, which is also the case if the credit limit of a trade credit insurance policy is cancelled, we shall be entitled to refuse the performance incumbent upon us and, in addition, to revoke all payment terms granted and to demand advance payment as security. If the customer is in default of payment, we shall be entitled to take back the goods and to enter the customer's facilities for this purpose. We are also allowed to prohibit the resale, processing, and removal of the delivered goods.

### **§3 Transfer of Risk, Shipping Method, Delivery Dates, Acceptance**

- (1) Unless expressly agreed otherwise in writing, we deliver and perform EXW (ex-works) from our business location.
- (2) Any risk shall pass to the customer at the latest when the finished goods leave Boway Germany and/or service/subcontractors or are reported ready for collection or shipment.
- (3) Partial deliveries or services are permissible as long as they are not unreasonable for the customer.
- (4) Delivery periods and dates always refer only to the approximate time of delivery from the place of business or warehouse.
- (5) In the case of call-off orders, the goods shall be taken in approximately equal monthly quantities, unless expressly agreed otherwise in writing.  
The total order quantity is considered called-off one month after the expiry of the period agreed for the call-off. The total order quantity shall be deemed to have been called-off one month after the expiry of the period agreed for the call, in the absence of such an agreement, twelve months after the conclusion of the contract. If the customer does not carry out a classification of the ordered goods incumbent upon him at the latest within one month after the expiry of the period agreed for the classification, in the absence of such an agreement within one month of our request at the latest, we may classify and deliver the goods at our discretion and at the expense of the customer.
- (6) The start of the delivery or performance time stated by us presupposes the previous clarification of all technical questions as well as the timely and proper fulfilment of the purchaser's obligations.
- (7) If an agreed delivery or performance date is exceeded for reasons for which we are responsible, the customer shall set us a reasonable extension period for delivery or performance in writing. This extended period shall be at least three weeks. If the delivery or service does not take place after expiry of the extended period and if the purchaser wishes to withdraw from the contract for this reason or to claim damages instead of the service, he shall be obliged to notify us of this expressly in writing beforehand, setting a further reasonable extended period and requesting delivery or service. At our request, the customer is obliged to declare within a reasonable period of time whether it will withdraw from the contract due to the delay

in delivery or performance and/or demand damages instead of performance or insist on the delivery or performance.

- (8) If our default is based on slight negligence, our liability for damages is excluded, unless it is a matter of damage to life, body, and health. Alternatively, in the event of slight negligence, we shall limit our liability for default to the typically foreseeable damage.
- (9) If a special acceptance has been agreed, it can only take place in the supplying facility immediately after notification of readiness for dispatch. The acceptance costs shall be borne by the customer. If the acceptance is not carried out, not carried out in time, or not carried out completely, we are entitled to dispatch the goods without acceptance or to store them at the expense and risk of the customer. The goods shall then be deemed to have been delivered in accordance with the contract upon dispatch or storage.

#### **§ 4 Metal contracts**

- (1) If a customer orders metal from us at the currently valid metal price for the purpose of subsequent processing by us ("metal contract"), the contract shall only be concluded through our contract confirmation, in which we confirm the type, quantity, price and due date of the fixing.
- (2) Within the schedule line period specified in the contract confirmation, the purchaser is obliged to send us an order for the desired product for delivery within the acceptance period, which contains the defined product specifications (product, quantity, delivery time). The price is composed of the metal price specified in the metal contract and the processing price valid at the time of the order.
- (3) After expiry of the acceptance period, we are entitled to charge a price surcharge of 1% per month started on the not accepted quantity. We are entitled at any time after the expiry of the acceptance period to invoice the customer for the not accepted quantities for immediate payment, including the accumulated interest. The quantity of metal paid for shall be credited to the existing or yet to be opened metal account (reworking account) at a ratio of 1:1.
- (4) If settlement via a metal account is not possible or does not correspond to our legitimate interests, we are entitled, after expiry of the acceptance period, to request the customer by reminder to execute the order within seven days. If the customer also lets this deadline expire, we have the right to cancel the fixing and to invoice the customer the difference between the fixing price in accordance with contract confirmation and the metal price at the daily price of the LME on the date of cancellation of the order, as well as the interest accumulated, and any costs incurred.
- (5) In case we have to provide security to the broker with regard to the metal contract, we shall be entitled to demand this security from the customer in the same amount and at the same time.
- (6) If, during the term of a metal contract, insolvency proceedings or similar proceedings are instituted against the assets of the customer and the insolvency administrator decides against the further performance of the contract, all our claims

for payment of metal not yet delivered and/or not yet transferred shall become due retroactively at the time of the opening of insolvency proceedings.

## **§ 5 Metal Price Fixation**

- (1) The purchaser must order the metal fixation from us at least 6 weeks before the confirmed delivery date by means of the options offered (full price transaction, metal account, metal contracts) in the amount of the intended delivery quantity. Otherwise, we shall be entitled to fix the corresponding metal prices independently for and at the expense of the customer. These will then be invoiced to the customer at the time of delivery.
- (2) The determination of the weight as a basis for the reworking of the metal provided is carried out by Boway Germany or service partners. In the event of deviations from the information provided by the customer, we will prove the weighing results with appropriate documents. We reserve the right to offset overdue claims against the customer with his credit balance from the metal delivered at the then valid daily price.
- (3) The customer guarantees a moisture content on the provided metal, in accordance with the relevant Boway Germany specification.

## **§6 Dimensions, weights, quality**

- (1) The relevant DIN/EN standards apply for compliance with the dimensions and technical data. Dimensions and weights stated by us in offers and order confirmations are made to the best of our knowledge but must be considered only as approximate.
- (2) On delivery, production-related deviations in weights and quantities of +/- 10% are permitted, both regarding the total final quantity and individual partial deliveries.
- (3) The weights and quantities stated in our delivery notes shall be relevant for invoicing. Complaints in this respect can only be considered if they are received by us immediately after delivery. Shortages must be noted by the customer on the delivery note / consignment note.

## **§ 7 Impediments to delivery, force majeure**

- (1) In the event of force majeure, our delivery obligations shall be suspended; if there is a significant change in the circumstances existing at the time of conclusion of the contract, we shall be entitled to withdraw from the contract. The same shall apply in the event of energy or raw material shortages, industrial disputes, official orders (e.g. due to national or international regulations of foreign trade law as well as no embargoes and/or other sanctions, restrictions from pandemics), traffic or operational disruptions (e.g. fire, machine breakdown, roller breakage, blockage of the Suez Canal or fire/sinking of ships) or if sub-suppliers do not supply us, do not supply us on time or do not supply us properly for the aforementioned reasons.

- (2) Our delivery obligation is subject to timely and correct self-supply, in particular in the case of subcontracting, unless the untimely or delayed supply or non-supply is by our fault.

## **§ 8 Prices, payment, set-off, withhold**

- (1) Our prices are EXW (ex-works) from our place of business. Unless expressly agreed otherwise in writing, our prices do not include the costs of packaging, coils, insurance, freight, and value added tax as well as duties, consular fees, customs duties and other fees.
- (2) Packaging and disposable reels will be charged at cost price and will not be returned. Reusable packaging will be credited with the invoiced value if it is returned carriage and expense paid within twelve months of the invoice date in undamaged condition. Reels, except disposable reels, will be credited in full if returned within six months of the invoice date in undamaged condition. If railway-owned containers are used, the rental fee will be charged.
- (3) In the case of non-ferrous metals, the prices in the respective order confirmation are based on the respective metal quotations on the day of receipt of the order, unless expressly agreed otherwise in writing. If no metal quotation is determined on this day, the quotation of the next following day on which a quotation is determined shall apply.
- (4) Price agreements for reworking transactions shall apply on condition that the customer provides the necessary reworking material free of freight and customs duty six weeks before the delivery date. Otherwise, we shall be entitled to cover the metal at the customer's expense at the current day price, without being obliged to allow the offsetting of cover quantities received at a later date. Subsequent claims for VAT from reworking or provision transactions shall be borne by the customer and shall be due for payment without deduction as soon as they have been asserted.
- (5) If the date of delivery or performance is later than three months after the conclusion of the contract, we are entitled, after timely notification of the customer and prior to the performance of the service or delivery of the goods, to adjust the price of the goods or service in such a way as it is necessary due to general price developments beyond our control (such as exchange rate fluctuations, currency regulations, changes in customs duties, significant increase in material or manufacturing costs) or due to changes in suppliers. For deliveries or services within three months, the price valid on the day of the conclusion of the contract shall apply in any case.
- (6) In the case of framework agreements with price agreements, the three-month period shall begin upon conclusion of the framework agreement.
- (7) We may demand payment on account or advance payment if the customer is ordering from us for the first time, if the customer is domiciled abroad, if the delivery is to be made abroad or if there are reasons to doubt the timely or complete payment by the customer. In case one of the above conditions occurs after the conclusion of the contract, we are entitled to revoke agreed payment terms and to make payments due immediately.

- (8) Unless expressly agreed otherwise in writing, the customer shall pay the invoice amount to us without deduction 30 days after the invoice has been issued. After expiry of this period, the customer shall be in default pursuant to § 286 Abs. 2 Nr. 2.
- (9) Cheques and bills of exchange are only accepted on account of performance. Bills of exchange are only accepted on the basis of a special agreement. Bill charges and other payment costs shall be borne by the customer and are due immediately. The customer may only set off counterclaims that are undisputed or have been established by a court of law. The customer shall only be entitled to rights of retention insofar as they are based on the same legal transaction.

### **§ 9 Retention of ownership**

- (1) Sold goods remain our property until all claims arising from the business relationship have been fulfilled.
- (2) If the goods are processed or treated by the customer, our retention of ownership shall extend to the entire new item. In the event of processing, combination or mixing with third-party items by the customer, we shall acquire co-ownership to the fraction that is equivalent to the ratio of the invoice value of our goods to that of the other items used by the purchaser at the time of processing, combining or mixing.
- (3) If the goods subject to retention of ownership are combined or mixed with a main item of the purchaser or a third party, the purchaser hereby assigns to us his rights to the new item. If the customer combines or mixes the goods subject to retention of ownership with a main item of a third party against payment, he hereby assigns to us his claims for remuneration against the third party.
- (4) The purchaser is entitled to resell the goods subject to retention of ownership within the scope of an orderly business operation. If the purchaser sells these goods on his part without receiving the full purchase price in advance or step by step against handover of the object of sale, he shall agree a reservation of ownership with his purchaser in accordance with these conditions. The purchaser hereby assigns to us his claims arising from this resale as well as the rights arising from the retention of ownership agreed by him. At our request, he is obliged to inform the purchasers of the assignment and to provide us with the information and documents required to assert our rights against the purchasers. The customer is only authorised to collect the claims from the resale despite the assignment as long as he duly fulfils his obligations towards us.
- (5) If the value of the securities provided to us exceeds our claims by more than 20 percent in total, we are obliged to release securities of our choice at the request of the customer.
- (6) In the event of seizure, confiscation or other dispositions or interventions by third parties in the goods subject to retention of ownership, the customer must notify us immediately.

## **§ 10 Product information**

- (1) We do not assume any liability for our product or performance specifications beyond the respective individual contract. We reserve the right to make technical changes in the frame of product development. Our product descriptions and specifications only describe the characteristics of our products and services and do not constitute a guarantee within the meaning of §433 BGB. Irrespective of this, the customer is obliged to check our products and services for their suitability for the intended use.

## **§ 11 Rights of the Purchaser in case of defects**

- (1) The products supplied by us comply with the applicable German regulations and standards. We do not assume any liability for compliance with other national regulations. If the products are used abroad, the customer commits himself to check the conformity of the products with the relevant legal systems and standards, and to make any necessary adjustments.
- (2) The customer cannot claim any rights due to defects in our deliveries and services insofar as the value or the suitability of the delivery and service is only insignificantly reduced.
- (3) Insofar as the delivery or service is defective and the purchaser has complied with the inspection and complaint obligations in writing in accordance with § 377 of the German Commercial Code (HGB), we shall, at our discretion, make a subsequent delivery or rectify the defect (subsequent performance). The purchaser shall grant us the opportunity to do so within a reasonable period of at least 15 working days.
- (4) The Purchaser may demand reimbursement of the expenses incurred for the purpose of subsequent performance, provided that the expenses are not increased by the fact that the subject matter of the delivery has subsequently been taken to a different place than the original place of delivery, unless the transfer is in accordance with its intended use.
- (5) If the subsequent performance fails, the customer may reduce the remuneration or withdraw from the contract. However, withdrawal from the contract is only permissible if the purchaser expressly notifies us with this beforehand in writing with a reasonable further extended period of time.
- (6) The Purchaser shall only have a right of recourse against us pursuant to § 478 of the German Civil Code (BGB) to the extent that the Purchaser has not entered into any agreements with its customer exceeding the legal claims for defects.
- (7) In the technical sense, metals have a maximum shelf-life, especially for surface aspects such as solderability. Such properties, e.g., the solderability of the product, depend on the basic material as well as the storage conditions. Based on the technical conditions, no generally valid max. storage time can be guaranteed. Technical information concerning shelf-life will be provided.

## **§ 12 Liability for damages**

- (1) Unless otherwise stated below, any claims of the customer beyond the provisions of § 9 - irrespective of the legal grounds - are excluded. We shall therefore not be liable for damage that has not occurred to the delivery item itself; in particular, we shall not be liable for loss of profit, production stoppages, further costs in the creation of value or for other financial losses of the customer. Insofar as our contractual liability is excluded or limited, this shall also apply to the personal liability of employees, representatives, and vicarious agents.
- (2) The above limitation of liability shall not apply if the cause of the damage is based on intent or gross negligence, if there is personal injury or if there is a claim for damages under the Product Liability Act. The same shall apply insofar as we have assumed a guarantee for the quality of the contractual performance contrary to the limitation of liability.
- (3) If we negligently infringe an essential contractual obligation, the obligation to pay compensation for material damage shall be limited to the typically occurring damage. Essential contractual obligations are those which provide the customer with legal positions which the contract is intended to grant him according to its content and purpose, and those whose fulfilment makes the proper execution of the contract possible, and whose compliance the customer regularly relies and may rely on.
- (4) As for the rest, our liability for damages is excluded.
- (5) The assignment of the claims of the Purchaser regulated in §§ 9, 10 paragraphs (1) to (3) is excluded.

## **§ 13 Limitation period**

- (1) The limitation period for claims based on defects in our deliveries and services as well as for claims based on our liability for damages is one year from delivery or acceptance. This shall not apply insofar as longer periods are prescribed by law and in cases of injury to life, body, or health, in the event of an intentional or grossly negligence infringement of duty on our part and in the event of claims for damages under the Product Liability Act,

## **§ 14 Material supply by customer**

- (1) If material or scrap supply by the customer is agreed, the customer shall provide the material free of charge and in due time in proper quality, please also note the maximum permissible moisture of the scrap. The same applies to the documentation with technical requirements and specifications required for our production process. Material supplies and documentation remain the property of the customer.
- (2) Our liability for quality defects, from product liability or delay in delivery is excluded insofar as these are due to not obviously recognisable faulty material supply, requirements or specifications of the purchaser or to delayed provisions despite timely request. The same exclusion of liability applies if the purchaser stipulates

that we have to provide pre-material according to his specifications and/or from certain suppliers selected by him, even if we are required by agreement to order ourselves and at our own expense.

### **§ 15 Industrial property rights (IPR), copyrights**

- (1) The provision of our deliveries and services shall not be associated with any transfer of rights of use to industrial property rights or copyrights to which we are entitled. Such a transfer shall only take place based on a separate agreement.
- (2) Any claims of compensation for damages by the Purchaser shall comply to §§ 9 and 10. They shall be excluded insofar as the Purchaser is responsible for the infringement of the IPR, in particular if the infringement of the IPR is caused by a not by us foreseeable application or by the fact that the delivery is modified by the Purchaser or used together with products not supplied by us.
- (3) Boway Deutschland shall not be responsible or liable for any infringements of third parties' IPR unless they knowingly concern its own deliveries and thus its own infringements.
- (4) In the event of infringements of IPR, we shall be entitled, at our discretion, to obtain the necessary IPR within a reasonable period of time or to supply the customer with a permissible alternative solution.

### **§ 16 Confidentiality**

- (1) The parties will not disclose confidential information to third parties or make unauthorised use of it for their own business purposes. In particular we refer to submitted samples, cost estimations, drawings, documents, business intentions, personal data, problems, data and/or solutions to problems and other made available know-how, irrespective of the content, as well as information obtained visually by inspecting plants/equipment (hereinafter collectively referred to as "information"), about which they obtain knowledge from the other party within the framework of the business relationship, as confidential for the duration and after termination of the contractual relationship. In particular they shall not pass it on to third parties or use it for their own business purposes without authorisation. This applies accordingly to the conclusion and content of this contract. The parties shall also impose this obligation on their employees.
- (2) This duty of confidentiality does not apply to information which
  - a. were already known to the other party outside the contractual relationship,
  - b. were lawfully acquired from third parties,
  - c. are or become generally known or state of the art,
  - d. are released by the issuing contracting party.
- (3) The confidentiality obligation for technical information ends 5 years after termination of the contractual relationship.

- (4) After termination of this contractual relationship, the parties shall return all documents and information requiring confidentiality without being requested to do so or eliminate them at the request of the issuing party and provide proof thereof.
- (5) The parties shall comply with the rules of data protection, in particular when they are granted to access to the other party's operations or hardware and software. They shall ensure that their vicarious agents also comply with these provisions, in particular they shall oblige them to maintain data confidentiality before beginning their activities. The parties do not intend to process or use personal data on behalf of the other party. Rather, a transfer of personal data occurs only in exceptional cases as a secondary consequence of the contractual services of the parties. The personal data shall be treated by the parties in accordance with the provisions of data protection law.

#### **17 Court of jurisdiction, choice of law**

- (1) If the customer is an entrepreneur or an enterprise, the place of jurisdiction shall be Gießen; If we institute legal proceedings, the general court of jurisdiction of the customer shall also apply.
- (2) The law of the Federal Republic of Germany shall apply to all legal relationships with us; the application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 is excluded.