

Bindfadenhaus en gros Gustav Scharnau GmbH

General Terms and Conditions

- Sale -

SECTION I: SCOPE OF APPLICATION, GENERAL INFORMATION

§ 1 Scope of application, applicability

1. The following General Terms and Conditions of Sale (hereinafter referred to as "GTC-S") shall apply to all business relationships between us, Bindfadenhaus en gros Gustav Scharnau GmbH, and buyers or other customers, the subject of which is the purchase of goods or services or works from us and our offer in this respect (hereinafter referred to collectively as "Customers"). In case of doubt, the term "goods" also refers to other services provided by us. In this context, these GTC-S also apply in particular to future and verbally concluded contracts. The version valid at the time of conclusion of the respective contract shall apply.
2. Deviating, conflicting or supplementary general terms and conditions (even if they do not contradict our GTC-S), in particular the customer's terms and conditions of purchase, delivery and payment, shall not become part of the contract, even if we are aware of them, unless we expressly agree to their validity in writing in a separate individual agreement.
3. **Our offer is aimed exclusively at entrepreneurs and** companies in accordance with § 14 of the German Civil Code (BGB), i.e. exclusively at natural or legal persons or partnerships with legal capacity who, when entering into a business relationship with us, in particular when placing an order, are acting in the exercise of their commercial or independent professional activity. **Accordingly, we do not conclude contracts with consumers for the purchase of goods from us.**

§ 2 Ineffective or incomplete regulations

Should individual provisions of the contracts concluded with the customer, including the provisions of these GTC-S, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic purpose comes as close as possible to that of the invalid provision. The same applies to any unplanned loopholes.

§ 3 Formal requirement

1. Notifications and declarations by the customer which are significant for the execution of the respective order and the execution and, if applicable, handling of the respective contractual relationship (in particular notifications of defects, requests for rectification, setting of deadlines, reminders, declarations of cancellation, terminations) must be made in text form in order to be effective, whereby notifications and declarations of this kind sent to us by e-mail must be sent exclusively to the address VertriebGS@scharnau.de, unless the customer is informed otherwise; if notifications and declarations of the aforementioned type are sent to another e-mail address, it cannot be assumed that they have been received.
In accordance with the statutory provisions, notifications and declarations by the customer must be received by us in order to be effective against us. In accordance with the statutory burden of proof regulations, in case of doubt it is up to the customer to prove receipt.
2. Verbal declarations or promises made by our sales staff, sales representatives and other auxiliary persons must always be confirmed by us in text form in order to be effective.

§ 4 Assignment

We are authorised to assign to third parties all claims, in particular payment claims, to which we are entitled against the customer. This also applies in particular to assignments for financing purposes.

§ 5 Applicable law, place of jurisdiction

1. The business relations between us and the customer subject to the scope of application of these GTC-S, in particular the contractual and other legal relationships established in connection with the customer, as well as any disputes arising in connection with these, shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The exclusive place of jurisdiction for all disputes in connection with the contracts and business relationships subject to the scope of these GTC-S is the court responsible for our registered office.

§ 6 Duty to inform/notify, responsibility of the customer

1. Unless expressly agreed otherwise in individual cases, the customer is solely responsible for ensuring that the goods ordered are suitable for a specific use intended by him and that any special requirements for the goods or their delivery as a result of an intended special use as well as any processes to be observed in this respect - such as, for example and in particular, in the aerospace and automotive industries - are observed and complied with.
2. To the extent that an order concerns goods which are intended by the customer for a special use in the aforementioned sense, the customer must expressly inform us of this circumstance when placing the order. If he fails to do so, he may not - notwithstanding any express deviating agreements in individual cases and our liability and warranty obligations in accordance with these GTC-S in other respects - invoke against us that any special requirements for the goods concerned or their delivery or processes in this respect, which are to be observed solely due to their intended use, may not have been complied with or observed by us.

§ 7 Conclusion of contract, delivery times

1. Our presentation of goods (e.g. in catalogues, shops, etc.) does not constitute an offer in the legal sense, but a non-binding invitation to the customer to order the goods in question and thereby make us an offer to conclude a corresponding contract. In this respect, the conditions for our goods (e.g. price, features, availability, delivery time, other specifications, etc.) are subject to change and non-binding. We reserve the right to make technical and other changes in shape, colour or weight within the scope of what is customary and reasonable in the trade.
2. By ordering the desired goods, the customer makes a binding contractual offer. Any confirmation of receipt shall only constitute a binding acceptance of the order if we expressly declare this. The mere receipt of an order by telephone does not constitute a binding acceptance on our part.
3. We are entitled to accept the contractual offer contained in the order within two weeks. Acceptance shall be effected either by express declaration of acceptance or by delivery or handover of the goods and always subject to the condition that the customer has acted in the exercise of his commercial or independent professional activity and thus as an entrepreneur in accordance with § 14 BGB (German Civil Code) when placing his respective order. We are free to refuse to accept an order - for example after checking the customer's entrepreneurial status or creditworthiness.
4. Delivery periods and deadlines shall only be binding if we expressly declare them to be binding in writing. If a delivery period has been declared binding and performance is delayed due to unforeseeable obstacles for which we are not responsible (force majeure, labour disputes, traffic disruptions, shortages of raw materials, non-delivery by our own suppliers through no fault of our own, etc.), this period shall be extended accordingly. The customer is entitled to withdraw from the contract after a reasonable grace period has expired. The customer may only exercise the right of cancellation within one week of the expiry of the grace period.
5. The conclusion of the contract is subject to the reservation that in the event of non-delivery, only partial, late or defective delivery to us, we shall not perform or shall only perform in part, unless we are responsible for such defective or non-delivery on our part. In these cases of non-availability or only partial availability of the goods, the customer will be informed immediately. Any consideration already paid in this respect will be refunded immediately.

§ 8 Retention of title

1. We reserve title to the goods until all claims arising from the current business relationship have been satisfied in full. In this respect, the retention of title also extends to goods already paid for in the event of unfulfilled claims from the business relationship. If the value of the goods subject to retention of title exceeds the claims to be secured from the current business relationship by 20 per cent, we are obliged to release the goods subject to retention of title at the customer's request.
2. The customer is obliged to treat the goods with care for the duration of the retention of title. If maintenance and inspection work is required, the customer must carry this out regularly at his own expense. Extraordinary dispositions of goods subject to our retention of title, such as transfers by way of security, pledges, etc., are only permitted with our prior written consent. The customer must inform us immediately in writing of all access by third parties to the goods, in particular of enforcement measures, handing over the documents necessary for an intervention. The customer must also inform us immediately of any other actual or legal impairment of the goods and of any damage to or destruction of the goods. The customer must notify us immediately of any change of ownership of the goods and any change of address. In the event of access by third parties, the customer is obliged to protect our rights to the best of his ability. The customer shall compensate us for all damages and costs incurred by a breach of these obligations and by necessary intervention measures against access to the goods by third parties, unless the customer is not responsible for the breach.
3. We shall be entitled to withdraw from the contract and demand the return of the goods in the event of behaviour by the customer in breach of contract, in particular in the event of default in payment. In addition, we shall be entitled to withdraw from the contract and demand the return of the goods in the event of a breach of an obligation in accordance with clause 2 above if we can no longer reasonably be expected to adhere to the contract. This shall not affect any obligation to set a grace period provided for by law.
4. The customer is authorised to resell or lease the goods subject to our retention of title in the ordinary course of business. He hereby assigns to us as security - until fulfilment of all claims to which we are entitled from the business relationship existing with him - the claims to which he is entitled against a third party as a result of the resale or rental. We accept the assignment. After the assignment, the customer remains authorised to collect the claim, but we reserve the right to collect the claim ourselves as soon as the customer does not properly meet his payment obligations and is in default of payment. Any handling and processing of the goods by the customer shall always be carried out in our name and on our behalf. If the goods are processed, we shall acquire co-ownership of the new item in proportion to the value of the goods delivered by us. The same shall apply if the goods are processed or mixed with other items not belonging to us.

§ 9 Remuneration, delivery costs, payment, default of the customer

1. Unless otherwise expressly agreed or otherwise stipulated below, the sales price stated by us in the presentation of the goods shall apply. In the case of special promotions, the price quoted shall apply for the duration of the special promotion.
2. We shall be entitled to increase the price accordingly if, at the time of performance of the service, there has been a change in the market price or an increase in the fees to be paid by us to third parties involved in the performance of the service compared to the time the order was placed. If the increased price is 20 % or more above the price originally agreed when the order was accepted, the customer has the right to withdraw from the contract. This right must be asserted immediately after notification of the increased price.
Irrespective of this, the customer is obliged to pay the statutory VAT at the rate applicable on the day the tax is incurred. Any increases in the respective gross invoice amount as a result of an increase in the statutory VAT rate in the meantime shall therefore not be deemed to be price changes in the above sense and shall therefore not be taken into account in the percentage assessment of a price increase.
3. The minimum net order value (sum of the prices of the goods in the order excluding VAT and shipping costs) is € 50.00. For orders below the minimum net order value, a minimum quantity surcharge of € 15.00 shall apply.
4. Unless expressly agreed otherwise, the customer shall bear the costs for the dispatch of the goods as well as for any special requirements on his part in this respect.
In the case of a sale by parcel service, the price does not include a flat-rate delivery charge of € 9.95 for a net sales price of up to € 500.00. From a net sales price of over € 500.00 we deliver free of charge within the Federal Republic of Germany.
In the case of dispatch purchases by a forwarding agent, the price is subject to a flat-rate shipping charge of € 25.00 for a net sales price of up to € 800.00. From a net sales price of over € 800.00, we also deliver forwarding goods free of charge within the Federal Republic of Germany.
Express delivery is generally possible if required. The costs for express shipping will be charged to the customer on request for the individual case, communicated in advance and are to be borne by the customer.
5. The customer shall not incur any additional costs when ordering by means of distance communication.
The customer can pay the price by cash on delivery, bank transfer, EC or credit card. In the case of payment by cash on delivery, the customer shall bear the costs charged by the logistics company commissioned to carry out the delivery for this service. We reserve the right to exclude individual payment methods or to specify a particular payment method.
6. For the preparation of drawings, we charge an hourly fee of € 110.00 plus VAT for processing based on the time required. The estimated time required for the preparation of drawings will be calculated for the individual case on request and communicated to the customer in advance. DXF drawings created by us are only sent to the customer in PDF format.
7. The customer is obliged to pay the purchase price within thirty days of receipt of the goods at the latest. After expiry of this period, the customer shall be in default of payment without the need for a separate reminder.
8. From the 2nd reminder onwards, we shall charge a "reminder fee" of € 40.00 in accordance with Section 288 (5) BGB. This amount shall be offset against any claims for reimbursement of legal costs to which we are entitled as a result of the customer's default; otherwise, the rights to which we are entitled as a result of the customer's default shall remain unaffected.
9. The invoice amount shall be payable net without deduction of discount; discounts and rebates shall only be granted on the basis of express agreement in individual cases.
10. If the customer is in arrears with a payment, all our existing payment claims against him shall become due immediately without the need for a separate due date or notice of default. Agreed deferrals shall end automatically in this case and are therefore always subject to the condition subsequent that the customer does not default on the fulfilment of payment claims to which we are entitled. The same shall apply if the customer suspends payments or is over-indebted or if insolvency proceedings are instituted against its assets.
11. The customer shall only have a right of set-off if his counterclaims have been legally established or recognised by us, unless his counterclaims are payment claims to which he is entitled on the basis of the same contract on the basis of which we assert our claims against him as a result of a defect in our services for which we are responsible. The customer may only exercise a right of retention if the counterclaim on which the right of retention is based is based on the same contractual relationship and has been legally established or recognised by us.
12. Our claims for payment shall lapse after five years in deviation from § 195 BGB. With regard to the beginning of the limitation period, § 199 BGB applies.

§ 10 Transfer of risk

1. Unless expressly stated otherwise in the order confirmation, delivery "ex works" is agreed. The risk of accidental loss and accidental deterioration of the goods shall regularly pass to the customer when the goods are handed over to the forwarding agent, carrier or other person or organisation designated to carry out the shipment. The determination of the shipping method and service or company and the packaging of the goods for shipping is at our dutiful discretion.
2. The handover of the goods to the customer shall be deemed to have taken place if the customer is in default of acceptance.

§ 11 Acceptance obligations

1. The customer, in particular but not limited to those in the aerospace or automotive industry, is obliged to accept ordered goods with limited shelf life, applicability and/or storability until the expiry of the (minimum) dates communicated to him in this respect or otherwise known to him. If the customer allows the relevant date to pass without taking delivery of the goods in question offered by us for delivery, even though he is not released from his obligation to take delivery in this respect, we shall be entitled to dispose of the goods at the customer's expense. This shall not affect the customer's obligation to pay the agreed purchase price for goods which have been legitimately disposed of by us.

2. If the fulfilment of an order requires the supply of material by a third party, which in turn is subject to a limited shelf life or storage life and is to be purchased in minimum quantities, the customer shall be obliged to purchase any surplus quantity of the supplied material remaining as a result of the minimum purchase obligation until the expiry of its shelf life or storage life and to reimburse us for the costs incurred by us for its purchase and storage.

§ 12 Customer responsibility for print content, warranty and indemnity

The customer shall be liable for the printed content and all legal consequences thereof. In particular, the customer guarantees to be the owner of any copyright, trademark, labelling, name and other intangible rights required for the execution of the order and shall indemnify us in this respect against all claims asserted against us by third parties due to an infringement of such rights as a result of the execution of the order in accordance with the agreement.

§ 13 Guarantee

1. As a rule, we do not give our customers any guarantees in the legal sense. The assumption of a guarantee by us therefore requires an express written declaration on our part in each individual case. Manufacturer guarantees remain unaffected by this.
2. Unless expressly agreed otherwise, no warranty can be given for the suitability of our goods for the purpose intended by the customer. This also applies in particular with regard to the conformity of our goods with standards, provisions and regulations which may have to be observed for the use intended by the customer. Mere information, recommendations or similar from our side in this respect are not legally binding and do not release the customer from his own tests and inspections and his responsibility in this respect.
3. The customer shall bear the burden of proof that a public statement by us or the manufacturer or its agent about certain properties of the goods, in particular in advertising or labelling, could have influenced its decision to purchase.
4. Due to their nature and chemical composition, certain goods are subject to a limited shelf life or storage life. This applies in particular to our adhesive tapes and other adhesive products. We are happy to provide more detailed information on shelf life, storage life and application period on request. Insofar as no agreement to this effect has been made with the customer in individual cases and the suitability of the goods, which is assumed by both parties according to the contract (see also section 1 above in this respect), does not require a different condition, we regularly only owe the shelf life and usability of the goods for a period of two weeks from the transfer of risk. The periods during which goods can be kept, stored and used in accordance with the relevant information provided by the manufacturer, supplier or us or otherwise in accordance with the provisions of these GTC-S shall constitute a quality of the respective goods, so that a lack of shelf life and, in particular, limited or deviating usability of the goods after expiry of the relevant periods shall not constitute a defect in the goods concerned. The achievement of the periods owed for the shelf life, storability and usability of the goods also presupposes their proper storage and use by the customer.
5. Samples produced by hand do not always correspond 100% with the machine-produced goods. Deviations between such samples and the delivered goods (e.g. with regard to quality, dimensions, design, colour, thickness, weight, etc.) which are customary in the trade and market and which are not significant shall therefore not constitute a material defect in the legal sense, unless expressly agreed otherwise. The same shall apply in the case of drawings and dimensional specifications in the event of insignificant deviations of the delivered goods from the relevant drawings and dimensional specifications. Notwithstanding the above, if dimensional accuracy has been expressly agreed, a defect shall be deemed to exist if the goods exceed the agreed tolerances. Minor counting errors or selection defects, minor weight loss or other minor deviations in the quality of the goods shall not, however, constitute defects unless the usability of the goods in question is significantly impaired as a result of the deviation. During production, the occurrence of a relatively small number of defective goods in this sense is technically unavoidable. A defective proportion of up to 3% of the total quantity therefore does not constitute a significant deviation from the quality owed and therefore does not constitute a defect and therefore does not justify any warranty claims by the customer in this respect.
With regard to printed products, colour deviations, technically necessary changes to the print status and other deviations due to production technology shall not constitute defects. Unless otherwise agreed in individual cases, specially produced printing tools, artwork and printing documents shall remain our property, even if the customer bears the costs for their production. All such materials remaining in our possession and ownership (printing tools, artwork, printing documents) shall be destroyed three years after the last follow-up order.
6. We reserve the right to make customary excess or short deliveries of the ordered quantity by invoicing the actual delivery quantity. Excess or short deliveries may amount to up to 10 % of the ordered quantity, unless expressly agreed otherwise. In the event of such an excess or short delivery, we shall inform the customer of this, including the extent of the excess or short delivery. It is clarified that the customer is expressly not entitled to subsequent delivery in the event of a short delivery within the aforementioned framework, as this would lead to disproportionate expense.
7. If the customer commissions us with the treatment or processing of materials provided to him for this purpose, we only guarantee the professional execution of the commissioned treatment or processing of the material, subject to special agreements to this effect in individual cases. Insofar as this is not expressly agreed in the individual case, we shall neither owe a specific result of the processing or treatment nor the suitability of that result for a specific use. When handling the materials provided by the customer for treatment or processing and when storing them, we only owe the care with which we treat our own items and materials.
8. The customer must inspect the delivered goods (and if the goods are delivered in instalments, each instalment of the goods) immediately for deviations in quality and quantity and notify us in writing of any recognisable defects within a period of one week from receipt of the goods. Hidden defects must be reported to us in writing within one week of discovery. Timely despatch of the notification of defects shall suffice to meet the deadline. Notification of defects should include as detailed a description of the defect as possible, which enables us to remedy the defect by subsequent fulfilment if possible. The customer shall bear the full burden of proof for all claim requirements, in particular for the defect itself, for the time of the existence of the defect, for the time of the discovery of the defect and for the timeliness of the notification of defects. Warranty claims asserted due to late notification of defects are excluded, unless we were aware of the defect in question at the time of delivery of the goods or this leads to injury to life, limb or health. Any further or additional liability on our part pursuant to the following § 12 of these GTC-S shall also remain unaffected. With regard to defects based on information or data provided by the customer or on the customer's specifications, the customer shall also not be entitled to any warranty rights.
9. If there is a defect according to the relevant provisions of these GTC-S and the customer is entitled to subsequent fulfilment claims in this

respect, we reserve the right to initially choose the type of subsequent fulfilment when asserting them.

If the subsequent fulfilment fails several times or is unreasonable for the customer, the customer may, at his discretion, demand a reduction of the remuneration (reduction), cancellation of the contract (withdrawal) or compensation for futile expenses as well as damages. In the case of minor defects, the customer has no right of cancellation. If the customer chooses compensation for damages, the limitations of liability in accordance with the following § 12 of these GTC-S shall apply.

10. At our request, the customer is obliged to send us the goods for the purpose of inspection and rectification. The goods must be properly packaged. We shall bear the costs of despatch for this purpose if the defect complained of is confirmed, otherwise the customer shall bear the transport costs. If we provide rectification or replacement delivery expressly as a gesture of goodwill, the customer must always bear the transport costs. If he wishes to insist on the statutory warranty, he must reject the goodwill offer immediately.
11. The customer shall not be entitled to any warranty rights to the extent that he himself or a third party commissioned by him has carried out actions to remedy defects on the goods concerned or has made attempts to do so and as a result of which the remedy of defects becomes impossible or considerably more difficult for us; in any case, the customer shall bear any additional costs incurred as a result.
12. Warranty rights of the customer in relation to deterioration in the quality or suitability of goods which are a regular consequence of the loss or expiry of the shelf life or storability or usability of the goods shall expire at the end of the periods notified to the customer in this respect, i.e. in particular at the end of the specified shelf life of the goods. Otherwise, the warranty period shall be one year from delivery of the goods. The one-year warranty period shall not apply if we can be accused of gross negligence or even wilful intent or in the event of damage to life, limb or health attributable to us. Any liability on our part under the Product Liability Act shall also remain unaffected.

§ 14 Limitations of liability

1. We and our vicarious agents shall not be liable for simple negligence, unless it is a breach of such obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the customer regularly relies and may rely (so-called "essential contractual obligations"). In the event of a simple negligent breach of such essential contractual obligations, our liability and that of our vicarious agents shall be limited to the foreseeable, direct average damage typical of the contract. In the event of damage to or destruction of material provided to us by the customer for processing, this shall regularly amount to the value of the material concerned, otherwise to the simple order value.
2. Insofar as we or our vicarious agents have not acted wilfully in this respect, liability on our part for indirect damage, consequential damage and loss of profit is excluded.
3. The above limitations of liability do not apply to any claims of the customer arising from statutory product liability on our part or from a guarantee. Furthermore, the limitations of liability shall not apply in the event of injury to body, health or life attributable to us.
4. To the extent that liability for damages that are not based on injury to the life, body or health of the customer is not excluded for simple negligence, such claims shall become time-barred within one year from the date on which the claim arises or, in the case of claims for damages due to a defect, from the date on which the item is handed over.