

GENERAL TERMS AND CONDITIONS OF JOSEF BARTHELME GMBH & CO. KG

I. GENERAL - SCOPE OF APPLICATION

1. The following Terms and Conditions of Sale and Delivery (Terms and Conditions of Josef Barthelme GmbH & Co. KG, hereinafter referred to as: Supplier) are an integral part of all offers and contracts for the delivery of goods by the Supplier, both in current and future business relations, even without renewed express reference thereto. By placing orders, the Purchaser declares its consent to this.
2. Supplementary terms and conditions of the Purchaser, terms and conditions contrary to or deviating from the Supplier's GTC shall not be recognized unless the Supplier has expressly agreed to their validity in writing. The GTC shall also apply if the Purchaser excludes the validity of the Supplier's terms and conditions of sale in its terms and conditions of purchase and no express objection is made thereto. Individual agreements made in individual cases between the Purchaser and the Supplier shall take precedence.
3. Oral agreements as well as amendments and supplements shall require written confirmation in order to be valid.
4. The Supplier reserves the rights of ownership and copyright of use and exploitation of cost estimates, drawings and other documents (hereinafter referred to as: Documents) provided to the Purchaser. The Documents, including any copies thereof, may only be made available to third parties with the prior consent of the Supplier and, if the order is not placed with the Supplier, shall be returned to the Supplier immediately upon request. All technical data in the sales documents, lists, drawings and instructions, as well as weights and dimensions have been carefully prepared. We reserve the right to make subsequent corrections in the event of obvious errors. Product-related technical data can be found in the respective valid product description. Deviations with regard to the dimensions, weight, technical design, manufacture and scope of the goods to be supplied are permissible within the normal product-specific tolerances. Furthermore, changes which serve the technical improvement and the products are considered as approved by the manufacturer.
5. It is the responsibility of the purchaser to verify whether our product is suitable for the purpose specified by him.

II. CONCLUSION OF CONTRACT | PRICES | TERMS OF PAYMENT

1. The Supplier's offers are non-binding and the right of prior sale is reserved. Orders/lists as well as agreements made by the Supplier's sales representatives shall only become legally binding upon written confirmation by the Supplier.
2. The delivery dates listed on order confirmations are always non-binding. Agreed dates shall only be binding if they have been expressly confirmed in writing as a fixed date. In the event of immediate execution of the order, the goods invoice or the delivery bill shall be deemed to be the order confirmation.
3. Order changes and cancellations require the timely written form and are then excluded as soon as the order is in the value-added processing. The Supplier shall notify the Purchaser in writing in the form of the amended order confirmation of any changes to the original quotation or order confirmation agreed by the Purchaser with the end customer or one of its order takers which result in additional costs. If the Purchaser does not object within seven working days of receipt of the amended order confirmation, the new terms shall be deemed to be part of the contract.
4. In the case of larger or regularly recurring custom-made products ordered by the Purchaser, we shall be permitted to make excess or short deliveries of up to 10% of the quantity ordered, even without prior consultation, and shall be invoiced as such. A return of the custom-made products is excluded.
5. All prices are quoted ex warehouse Nuremberg excluding standard packaging plus VAT. Requested special, repackaging or small packaging will be charged separately to the customer. The same applies to special and express deliveries.
6. Cost estimates are non-binding, unless the opposite is expressly agreed in writing. Quoted prices shall only apply upon acceptance of the entire goods or quantity offered and within the quotation period. The supplier reserves the right to adjust prices even after conclusion of the contract until delivery due to circumstances for which the supplier is not responsible or which could not be foreseen with sufficient certainty, e.g. collective wage agreements, changes in raw material prices, other price changes of suppliers, invoiced transport costs or exchange rate fluctuations. Orders below a net value of 50,00 EUR can only be executed against a handling fee of 15,00 EUR.
7. For all articles which fall under the disposal law, the corresponding disposal lump sum will be charged.
8. If the supplier has taken over the installation or assembly the purchaser shall bear all necessary ancillary costs, such as travel and transport costs and allowances, in addition to the agreed remuneration, unless otherwise agreed in writing.
9. The Supplier's invoices shall be payable without deduction no later than one month after the invoice date. The deduction of a discount requires a special written agreement.
10. If the payment deadline is exceeded, the supplier can demand interest on arrears from the purchaser in the amount of eight percentage points above the respective base interest rate in accordance with § 247 BGB (German Civil Code). The right to claim further damages is reserved. The above shall not apply if the Customer proves that it is not responsible for the delay. If the customer defaults on a payment, all claims shall become due immediately unless the customer proves that it is not responsible for the default.
11. The customer agrees to the electronic sending of invoices by e-mail. If the invoice

is sent by post at the request of the customer, the customer agrees to pay a flat rate of 1.00 EUR per invoice.

12. Advance services (e.g. material stocking), which are provided within the scope of an offer at the request of the Customer, may be invoiced to the Customer, even if a contract is not concluded, provided that the Supplier has expressly notified the Customer of this prior to the provision of such advance services.
13. In the event of doubt as to the solvency of the Customer, the Supplier reserves the right to demand advance payments or the provision of securities.
14. If the order is to be qualified as an offer according to § 145 BGB (German Civil Code), the Purchaser may accept it within four weeks.

III. DELIVERY DEADLINES | DELAY IN DELIVERY

1. Compliance with delivery periods shall be conditional upon the timely receipt of all specifications, documents, necessary approvals and approvals, in particular of plans, to be provided by the Purchaser, as well as compliance with the agreed terms of payment and other obligations by the Purchaser. If these preconditions are not fulfilled in time, the delivery periods shall be extended accordingly, unless the Supplier is responsible for a delay.
2. Transactions for delivery by a fixed date (§ 376 HGB (1)) require express written confirmation.
3. If the non-observance of delivery periods is due to force majeure, e.g. war, riot, mobilization or similar events, (e.g. strike, lockout, etc.), the periods shall be extended appropriately to the situation and shall be communicated by the Supplier to the Purchaser to the best of its ability. The Purchaser shall not have the right to withdraw from the order, provided that the Supplier can prove that it was influenced due to force majeure.
4. Such reasonable extension of the delivery periods shall also occur in the event that the Supplier does not receive its own supplies in due time.
5. If the Supplier fails to meet the delivery date or the delivery period, the Purchaser shall be obliged to set the Supplier a reasonable grace period in writing. If the Supplier culpably fails to deliver within the grace period set, the Purchaser shall be entitled to withdraw from the contract (with the exception of clause III /3).
6. If the Supplier is responsible for the non-observance of bindingly agreed and fixed dates, the Purchaser may - if it can prove that it has suffered damage as a result thereof - claim compensation for each full week of delay of 0.5% each, but in no case more than a total of 5% of the price of that part of the delivery which could not be delivered due to the delay. The limitation of liability shall not apply if the Supplier can be accused of intent or gross negligence or if the Supplier is compulsorily liable for injury to life, body or health.
7. At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether it intends to rescind the contract due to the delay in delivery and/or claim damages in lieu of performance and/or insist on delivery.
8. If the delivery, shipment or delivery is postponed at the request of the Purchaser beyond the time stipulated in the contract, the Supplier may charge the Purchaser a storage fee of 0.5% of the invoice amount for each month or part thereof, but not more than 5% of the storage fee, no earlier than ten working days after notification that the goods are ready for shipment. The contracting parties shall be free to prove higher or lower storage costs.
9. The Supplier shall be entitled to make partial deliveries to a reasonable extent. Deviations with regard to the dimensions, weight, technical design, manufacture and scope of the goods to be delivered are permissible within the customary product-specific tolerances. In addition, changes which serve the technical improvement of the products shall be deemed approved by the supplier.

IV. TRANSFER OF RISK

1. Shipment shall be effected on behalf of the Purchaser by a carrier of the Supplier's choice.
2. The Supplier shall be entitled, but not obliged, to take out separate insurance policies in the name of and for the account of the Purchaser to cover the risks associated with the transport.
3. The risk of accidental loss and/or destruction shall pass to the Purchaser upon dispatch or handover to the person performing the transport. This shall also apply in the event that the Supplier carries out the transport itself or through its vicarious agents.
4. Furthermore, the risk shall pass to the Purchaser as soon as the Purchaser is in default of acceptance after receipt of the Supplier's notification of readiness for shipment.
5. Special agreements shall apply to the taking back of packaging.
6. If no person designated by the Purchaser is present on the agreed date at the specified place to be delivered or if this person or other persons are not prepared to accept the goods, the Purchaser shall be in default of acceptance with the consequence that the risk shall pass to him. Furthermore, he shall bear the additional costs incurred by the fact that a new delivery is made.
7. The Purchaser shall not be entitled to refuse acceptance of deliveries due to insignificant defects.
8. In reasonable time before delivery of the goods the purchaser is obliged to name one or more persons who are authorized to accept the goods and the accompanying documents and to sign the delivery documents and accompanying documents. This shall apply in particular if the goods are to be delivered to a place other than the Purchaser's place of business. If such information is not provided,

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those persons who have actually taken delivery of the goods shall be deemed to be authorized to take delivery of the goods and to sign the delivery documents (delivery bill and other accompanying documents).

V. RETENTION OF TITLE

1. The delivered goods (goods subject to retention of title) shall remain the property of the Supplier until all claims of the Supplier against the Purchaser arising from the business relationship, including all current account balance claims, have been satisfied.
2. For the duration of the retention of title, the purchaser is prohibited from pledging or transferring the goods by way of security. In the event of seizure, confiscation or other dispositions or interventions by third parties, the Purchaser shall notify the Supplier without delay.
3. The Purchaser shall be entitled to resell the retained goods in the ordinary course of business, provided that it receives the agreed remuneration or no prohibition of assignment has been agreed. The Purchaser hereby assigns to the Supplier by way of security the claim to the purchase price arising from the sale. However, he shall remain authorized to collect the claims assigned by way of security as long as this authorization is not revoked. The authorization may be revoked if the Purchaser culpably fails to meet or no longer meets its contractual obligations. In the event of a revocation of the direct debit authorization, the Supplier shall be entitled to notify the effected assignment. The Purchaser shall immediately provide the documents necessary for notification of the assignment and for collection.
4. A sale in the ordinary course of business shall not be deemed to have taken place if, contrary to para. 2, the Purchaser pledges the Retained Goods to a third party, transfers them by way of security and/or makes them the subject of factoring and/or sale-lease-back procedures.
5. In the event of processing and/or treatment of retained goods, such processing and/or treatment shall be carried out on behalf of and for the Supplier as manufacturer. In this case, the Supplier shall be entitled to (co-)ownership of the items resulting from the processing and/or treatment of the retained goods in the ratio of the retained goods to the value of the new item at the time of processing and/or treatment. Likewise, the Supplier shall be entitled to pro rata co-ownership of the new item if, in addition to the goods subject to retention of title, goods of third parties are also processed. If the Purchaser resells the new item produced by him, he hereby assigns by way of security the claim to which he is entitled from the sale in the amount of the value of the reserved goods.
6. In the event of damage or other impairment of the reserved goods, the Purchaser shall notify the Supplier without delay. If the Purchaser incurs claims against third parties as a result of the damage or impairment, it hereby assigns these claims to the Supplier by way of security.
7. If the value of all security interests to which the Supplier is entitled exceeds the amount of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security interests at the request of the Purchaser.
8. In case of breach of duty by the Purchaser, in particular in case of default in payment, the Supplier shall be entitled to rescind the contract and to take back the retained goods. The Purchaser shall be obliged to surrender them. The taking back of the reserved goods or the assertion of the reservation of title alone shall not require the Supplier to withdraw from the contract and shall not be deemed to be an implied declaration of withdrawal from the contract, unless the Supplier expressly declares that these actions are to be understood as withdrawal.
9. Until the final transfer of ownership, the Purchaser shall be obliged to treat the purchased goods with care; in particular, the Purchaser shall be obliged to insure them adequately at their replacement value against fire, water and theft at its own expense. Insofar as maintenance and inspection work is required, the Purchaser must carry this out in good time at its own expense.

VI. WARRANTY

1. The warranty period is 12 months. Prerequisite for warranty claims is in each case an immediate notice of defects, as well as an immediate examination or inspection of the goods upon delivery. For transport damages § 438 HGB is relevant. The goods shall be deemed to have been delivered in a condition in accordance with the contract if externally visible damage or loss is not reported immediately or externally non-visible damage is not reported within eight days. For hidden defects, this period shall apply from the time of their discovery. If the Purchaser fails to notify the Supplier, the Purchaser shall be liable for any damage suffered by the Supplier as a result of the presumption of conformity under Section 438 of the German Commercial Code, in particular the loss of its claims against the carrier.
2. Claims for defects shall not exist in the case of insignificant deviations from the agreed quality and in the case of insignificant impairment of usability; in the case of natural wear and tear or damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable equipment, defective construction work, unsuitable foundation soil or as a result of particular external influences not assumed under the contract and in the case of software errors which can no longer be reproduced.
3. If the Purchaser or third parties carry out improper modifications, installation/removal or repair work, there shall also be no claims for defects for these and the resulting consequences.

4. In the event of a justified notice of defect, i.e. in the event of material defects which or the cause of which already existed at the time of the passing of risk, the Supplier shall be entitled, at its option, to rectify the defect (removal of defects) or to make a subsequent delivery (replacement delivery).
5. The Purchaser shall give the Supplier the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. The expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs as well as the expenses for the removal of the defective item and the installation or fitting of the repaired or delivered defect-free item shall be borne by the Supplier if a defect is actually present. If the Supplier delivers a defect-free item for the purpose of subsequent performance, the Customer shall surrender the defective item. This shall apply accordingly to defective components if these are replaced by defect-free components within the scope of subsequent improvement. If a request by the Purchaser to remedy a defect turns out to be unjustified, the Supplier may also subsequently demand reimbursement of the costs of the defect analysis in accordance with the applicable prices for services.
6. If the Supplier is not in a position to remedy the defect or make a subsequent delivery or if it is entitled to refuse to remedy the defect or make a subsequent delivery pursuant to Section 439 (3) of the German Civil Code (BGB), or if the remedy or subsequent delivery is delayed beyond a reasonable period for which the Supplier is responsible, or if the remedy or subsequent delivery fails twice, the Purchaser shall be entitled, at its option, to rescind the contract or to demand a corresponding reduction in the purchase price.
7. Claims of the Purchaser for expenses incurred in the course of supplementary performance shall be excluded to the extent that expenses are increased because the subject matter of the delivery has subsequently been brought to another location than the Purchaser's branch office, unless such transfer is in accordance with the intended use of the subject matter of the delivery. This shall apply accordingly to the Purchaser's claims for reimbursement of expenses pursuant to Section 445a of the German Civil Code (BGB) (Seller's right of recourse) provided that the last contract in the supply chain is not a purchase of consumer goods.
8. The Purchaser's right of recourse against the Supplier pursuant to Sec. 445a BGB (German Civil Code) (Seller's right of recourse) shall apply only to the extent that the Purchaser has not concluded any agreements with its customers exceeding the scope of the statutory provisions governing claims based on product defects.
9. In the event that a claim for supplementary performance is justifiably asserted against the Purchaser by its customer or its customer's customer, the Purchaser shall give the Supplier the opportunity to effect supplementary performance itself within a reasonable period of time before procuring „substitute“ performance elsewhere. The Purchaser shall impose this obligation on its customer accordingly. If the Purchaser breaches these obligations, the Supplier reserves the right to reduce the reimbursement of expenses to the amount which it would have incurred if it had carried out subsequent performance itself. § Section 444 of the German Civil Code (BGB) shall remain unaffected.
10. If the purchased goods are defective, the Supplier shall be entitled to choose between subsequent performance in the form of remedy of the defect or delivery of a new defect-free item. In the event of remedy of the defect, the Supplier shall be obliged to bear all expenses necessary for the purpose of subsequent performance, in particular transport, travel, labor and material costs as well as the expenses for the removal of the defective item and the installation or fitting of the repaired or delivered defect-free item, unless such expenses are increased by the fact that the purchased item was transported to a place other than the place of performance, unless such transport is in accordance with its intended use. The supplier may refuse subsequent performance if the expenses for remedying the defect are likely to exceed the purchase price.

VII. RETURN OF GOODS

1. Returns are only possible with the prior written consent of the supplier and must be made within 6 months of the transfer of risk. Returned goods must be unused, complete, and in a resalable condition. The customer is responsible for transport and packaging costs. Custom-made products, customer-specific lighting solutions, and products that have already been installed or put into operation are excluded from return. The supplier is entitled to charge a reasonable processing fee for inspection and restocking.
2. The return of goods free of defects is a goodwill decision of the supplier and requires the prior written consent of the supplier. Approvable goods only concern undamaged, originally packed, common stock goods, no special productions or procurements or overproduction (cf. II 4). The Supplier shall inform the Purchaser in each case of a goods return number via which the goods must be returned exclusively. The return shipment must be free of charge. In the event of unreturnable goods or returns without a goods return number, the Supplier shall refuse to accept the goods.
3. After examination of the goods, the supplier will issue a credit note in the maximum amount of 70% of the value of the goods at that time, but reserves the right to make additional deductions depending on the age, type and condition of the goods. For returned goods under 100.00 EUR per return, a handling fee of 15.00 EUR will be charged. Furthermore, the customer has to bear all transport costs, as well as costs of packaging, repackaging and possible repair.

VIII. COMPENSATION FOR DAMAGES

1. Defective goods which show a material defect within the warranty period - irrespective of the period of operation - shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge, provided that the cause of the defect already existed at the time of the passing of risk.
2. Claims for material defects as well as rescission and reduction shall become statute-barred 12 months after the statutory commencement of the limitation period. This shall not apply if longer periods are prescribed by law, in the case of intentional or grossly negligent breach of duty by the Supplier, in the case of fraudulent concealment of a defect and in the case of non-compliance with a quality guarantee. The Purchaser's claims for expenses pursuant to Sec. 445a BGB (Seller's recourse) shall also become statute-barred after 12 months from the statutory commencement of the limitation period, provided that the last contract in the supply chain is not a consumer goods purchase. The statutory provisions on suspension of expiry, suspension and recommencement of the periods shall remain unaffected.
3. In the event of claims based on defects, payments by the Purchaser may be withheld to an extent which is in reasonable proportion to the material defects which have occurred. The Purchaser shall have no right of retention if its claims for defects are time-barred. If the claim for defects is unjustified, the Supplier shall be entitled to demand reimbursement of the expenses incurred.
4. Claims for damages by the Purchaser, irrespective of their legal basis, in particular for breach of obligations arising from the contractual relationship and from tort, shall be excluded, except in cases of mandatory liability under the Product Liability Act, in cases of liability for wilful misconduct or gross negligence, for injury to life, limb or health, or for breach of a condition which goes to the root of the contract.
5. The claim for damages for the violation of essential contractual obligations shall, however, be limited to the foreseeable damage typical for the contract, unless a limitation is excluded for another reason due to intentional or grossly negligent conduct or due to injury to life, body or health.
6. In the event of impossibility of performance for which the Supplier is responsible, the Purchaser's claim for damages shall be limited to 10 % of the value of that part of the delivery which cannot be put to the intended use due to the impossibility of delivery, unless the Supplier can be accused of intent or gross negligence and no mandatory liability for injury to life, limb or health applies. The Purchaser's right to rescind the contract shall remain unaffected.
7. Apart from personal injury, the Supplier shall only be liable if the injured party proves gross negligence on the part of the Supplier. Claims for damages in cases of slight negligence are excluded. This shall not apply to personal injury or damage to items accepted for processing if the exclusion of liability was not expressly negotiated for these items.
8. Any further liability for damages than provided for in Clause 6, Clause 3 and Clause 8 shall be excluded, irrespective of the legal nature of the asserted claim. This shall apply in particular to claims for damages arising from fault at the time of conclusion of the contract, due to other breaches of duty or due to tortious claims for compensation for material damage in accordance with § 823 BGB.
9. An exclusion period of 18 months shall apply to the limitation of all claims that are not subject to the limitation period due to a defect in the item. It shall commence from the date of knowledge of the damage and of the person causing the damage.
10. The limitation according to clause 8.8 shall also apply insofar as the customer demands compensation for wasted expenditure instead of a claim for compensation for the damage of the performance.
11. Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of the Supplier's employees, representatives and vicarious agents.

IX. MATERIALS PROVIDED

1. All materials, products, etc. provided by the Purchaser or the End Customer (Provided Goods) shall be delivered to the Supplier free of charge and no later than 20 working days prior to the Supplier's agreed delivery date. The supplier shall only inspect the goods provided for quantity and transport damage. A qualitative inspection of the provided goods shall not take place.
2. The supplier shall not be liable for defects and damage attributable to the goods provided. If a claim is made against the Supplier on the basis of damage and defects attributable to the goods provided, the Purchaser shall indemnify the Supplier against such claims.

X. PLACE OF JURISDICTION | PLACE OF PERFORMANCE | SEVERABILITY CLAUSE

1. The legal relationship in connection with this contract shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of Josef Barthelme GmbH & Co. KG.
3. Place of performance is Nuremberg.
4. Should any provision of these Terms and Conditions or any provision of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements.
5. The German version of the General Terms and Conditions of Sale shall be the authoritative version. In the case of translations, it shall take precedence over the English translation and shall be structured in accordance with German law.

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