

# TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT OF BUNZL GROSSHANDEL GMBH

## I. General

1. The following terms shall exclusively apply to commercial transactions with customers and suppliers. We shall only be held liable for letters of confirmation and adverse conditions of purchase notwithstanding these terms, if and to what extent we confirmed them in writing. Neither the omission of an objection against the letter of confirmation by us, nor the reference to purchase conditions or their transmission by the customer, shall be regarded as consent.
2. These terms shall also apply to the following extensions of the scope of the contract, even if such extensions will not be re-confirmed in writing.
3. Oral agreements or such made on the phone shall require prior written confirmation by us to be effective.
4. Our offers are subject to confirmation and not binding. We shall be entitled to electronically store the data which are important to carry out the terms of the contract.
5. Except for indisputable counter claims, set-off and retention by our customers shall be barred.
6. If any provision of these terms and conditions or any other provision whatsoever within the scope of other agreements are held or become invalid, such invalidity shall not affect the validity of all other provisions or agreements.

## II. Scope of the obligation to deliver

A shortage or surplus not exceeding 20% in quantity cannot always be avoided for technical reasons and shall, in no circumstances, give rise to complaints.

## III. Prices

1. Our prices shall be net prices. The respective Value Added Tax shall be charged separately.
2. In the event that our actual order value will be exceeded, our prices are free destination, packing included.
3. In the event that the customer orders smaller lots or wants us to dispatch to various destinations or consignees, the forwarding expenses shall be charged separately.
4. The manufacturing costs of the printing blocks, inclusive of matrices and rubber plates, shall be borne by the buyer, if he does not provide a usable printing plate, matrices and rubber plates.

## IV. Terms of payment

1. Our receivables shall be due upon accounting and payable without any deductions whatsoever within 30 days from date of invoice. Moreover, if payment is not made by the due date, collection costs shall be charged, where appropriate.
2. For payment within 8 days, we grant a 2% discount.
3. Cheques shall only be accepted in payment and they shall not be deemed to constitute payment until honoured.
4. Notwithstanding any other provisions set by the customer, we shall have the right to set off payments against his elder debts first. In the event that costs and interests have already been incurred, we shall be entitled to first set off the payment against the costs, then against the interests and at last against the principal claim.
5. In the event that our customer defaults in payment, we shall be entitled to charge interests plus statutory turnover tax amounting to the interest rate charged by the commercial banks for open credits.
6. If our customer fails to fulfil his payment obligations, especially if he fails to honour a cheque or if he stops his payments, or, if news have come in that may call into doubt our customer's credit worthiness, we shall be entitled to call in the total balance due, even if we have accepted cheques. In this case, we shall also be entitled to ask for cash before delivery and securities. We may also order the customer not to resale the goods delivered under reservation of title and to insist on their return or on the transfer of the indirect property in these goods at the customer's expense.

## **V. Periods of delivery**

1. The periods stipulated for delivery define, subject to unexpected impediments, the period between the availability of matrices and rubber plates ready for press after approval of the press proof and the dispatch of goods from stock or ex delivering plant.
2. In the event that Bunzl fails to meet a stipulated period of delivery, the buyer or customer shall be entitled to withdraw from contract after fruitless expiration of a respite of at least 8 weeks to be set by the customer himself. Further-reaching rights of the customer are excluded. Partial shipments shall be permitted and be deemed to constitute independent transactions.
3. In the event of unforeseen impediments, such as disturbances, engine troubles, delays on account of the procurement of materials, work allotment, stoppage, traffic problems, plant interruptions and other unavoidable delays as well as delays that may arise from force majeure, war, strike, lock-out and riot, Bunzl shall be entitled to arrange for an appropriate extension of the deadline as soon as the impediment has disappeared, without being held liable for damages incurred by the customer as a result of the delays. Once the impediment has disappeared, the period of delivery agreed upon will start to run anew.
4. In the event of a delay where exact terms had been stipulated which we failed to meet for other reasons than those stated above, where the grace period of 8 weeks has expired and the buyer or customer incurs a damage or a loss of anticipated profit, we shall only be liable to make good a detected loss; in no circumstances, however, liability will exceed the amount off 50 % of the order volume. Any further-reaching claims whatsoever are excluded.
5. Right of withdrawal. Events that drastically change, wholly or in part, the implicit basis of the delivery contract, whether they may affect the customer or the supplier and his sub-suppliers or not, shall entitle the supplier to adapt, wholly or in part, the contract to the changed conditions, excluding claims for damages.

## **VI. Warranty and liability**

1. The paper qualities depend on the available raw materials. We shall therefore only assume responsibility for quality variations, differences in colour and weight variations if they had been avoidable under the given circumstances.
2. In no circumstances, we shall assume responsibility for the durability of printing and paper inks, because the current state of colour technology does not allow to give an absolute guarantee.
3. Plastics products are delivered in compliance with the terms of the contract, even though they have the usual deviations with regard to material thickness – up to  $\pm 10\%$  - and dimensions – up to  $\pm 10\%$ .
4. We only assume responsibility for colour and gauge-pin variations, if the buyer is able to proof that the variance is essential for his purposes.
5. BUNZL shall receive written notification of any defects whatsoever immediately after receipt of goods.
6. Complaints against BUNZL shall be placed in writing not later than 5 days after arrival of goods at the buyer/customer.
7. Defects discovered upon inspection of a part of the consignment or of a partial shipment shall not justify a complaint about the entire consignment.
8. If any of the goods prove on our inspection to be defective, we shall have the right to replace the goods or to refund to the customer the price of the goods. Further reaching claims such as indemnification, penalties or similar are excluded.
9. The delivery of a smaller quantity of defective pieces totaling not more than 3 % of the total quantity cannot give rise to a complaint, because it is unavoidable for technical reasons. We do not assume any responsibility that our goods are suitable for a certain application.
10. Our liability for entitlements to damages on account of tort (in particular: product liability) claimed by the customer shall be limited to damages arising from wrongful intent or gross negligence. Same applies to claims on account of special breach of obligation, consultancy or culpa in contrahendo. These claims become statute-barred within 6 months. Claims on account of tort become statute-barred within 3 years in the event of ordinary negligence. The periods of limitation begin to run on the date of dispatch.
11. Warranty or damage claims are excluded, if they are based on improper usage, maintenance, handling or processing by the customer or third parties or on normal wear and tear or on damages in transit.

## **VII. Print jobs, industrial property rights**

1. We shall not be liable for misprints overlooked by the customer in proofs provided by him. Only the texts and type variations which we confirmed in writing shall be binding. Costs arising from additional variances, colour copies, printouts, designs, drawings and printing plates can be charged separately. In the event of inaccurate specifications, we shall act at our best judgement.
2. Property and any other intellectual property rights in forms, drawings, offset litho plates, printing plates, samples, copies, technical documentations, preliminary estimates or offers delivered to the customer shall vest and remain vested in our company. Customer shall only make use of them in the agreed manner.
3. If products were manufactured in accordance with drawings, models and samples provided by the customer, he shall be liable to us that industrial property rights or other rights of third parties are not infringed by their production and delivery and he shall indemnify us against all damages which may result from such infringements.
4. Property in designs and matrices manufactured by us or on our behalf shall remain vested in our company or in our contractor, even though the buyer will be charged with production costs for it. Deviant agreements must be made in writing.
5. In the event that he renounces at the further completion of the order after the manufacture of designs or other preparatory things, the cost of the design etc. will be charged separately to the customer, subject to further-reaching claims preferred by the supplier.

## **VIII. Transfer of risk, dispatch**

Dispatch is always made at the buyer's risk. When goods are dispatched ex works or from stock, the risk passes to the buyer. Where the customer requests special delivery requirements such as express consignment or similar, he will have to pay the additional costs for such consignments.

## **IX. Retention of title, anticipatory assignment**

1. We retain title to the goods delivered by us pending full performance of all claims, inclusive of all balance claims from current account, which we are entitled to against our customer now and in future.
2. Our customer is entitled to process the delivered products to which we retain title within the due course of his business, to connect them with other products and to sell them. Resale shall be admissible, if the claims on account of the resale have not already been assigned, mortgaged, distrained or otherwise charged.
3. Processing or alterations are always performed for us as the manufacturers, but without obligation on our part. In case our property lapses due to connection, it shall be agreed by now that the joint property in the final finished product passes to us in consideration of the pro rata value. This also applies if another object must be regarded as principal object. Our joint ownership share is held by our customer free of charge. The amount of our joint ownership share shall be determined by the ratio between the invoice value of the goods to which we have retained joint title and the value of the product created by processing or connection at the time of such processing or connection.
4. By way of security the customer shall assign to us by now all claims inclusive of all balance claims from open accounts arising from resale or another legal ground (insurance, tort) with regard to the goods to which we have retained title in terms of clause IX.1., as well as the claims on account of the sale of new goods created by processing or connection as set forth in clause IX.3. Our customer is subject to revocation entitled to collect the claims assigned to us on his behalf. We may revoke this right as well as the right to process or to connect this product covered by proprietary law with other products in particular, if our customer fails to duly fulfil his payment obligations. Be it that we revoke, our customer shall be committed to handing over free of charge any documents we need to assert our rights and to immediately providing us with any relevant information.
5. In the event that our customer defaults in payment, his right to resale both the goods to which we have retained title in terms of clause IX.1. and the new goods created by processing or connection to which we have retained joint title in terms of clause IX.3, shall lapse. We shall be entitled to ask for the surrender of the delivered goods that are still available and separable, without that our customer is entitled to a right of retention.
6. We shall be entitled to inform the debtors of the assignment on behalf our customers.
7. In the event that the value of the security given to us exceeds the amount of our claims by more than 20 %, we shall be committed to release or re-assignment of security to this extent at the customer's request.

8. Once he has fully paid all receivables in terms of IX.1, the property in the goods to which we have retained title or joint title shall pass to our customer. At the same time, he acquires the accounts receivable assigned by way of security.

**X. Place of performance/jurisdiction**

Place of performance and place of jurisdiction is our registered office in Marl. Terms and conditions of sale, delivery and payment of BUNZL Großhandel GmbH GB/XII 02