

General Terms and Conditions

I. General

1. Deliveries, services and quotations on the part of Business Excellence Network GmbH, hereinafter referred to as BEX, shall be effected exclusively on the basis of these General Terms and Conditions of Business. These General Terms and Conditions of Business shall thus apply to all future business relations, including in the event that they should not be exclusively re-agreed. These General Terms and Conditions of Business shall, at the latest, be deemed accepted upon the receipt of goods or services. Any counterconfirmations on the part of the customer noting their terms and conditions of business or purchase shall hereby be rendered invalid. We shall also decline to accept such terms and conditions in the event that we should not expressly reobject to the same following receipt of such a counterconfirmation.
2. All the arrangements which are reached between BEX and a purchaser for the purpose of executing a contract shall be recorded in writing in the same. Verbal agreements shall be invalid.
3. Consumers within the purport of these General Terms and Conditions of Business shall constitute natural persons with whom business relations are commenced without it being possible to ascribe commercial or freelance occupational activity to such persons. Entrepreneurs within the purport of these General Terms and Conditions of Business shall constitute natural or legal persons or incorporated partnerships with whom or which business relations are commenced and who or which perform commercial or freelance occupational activity. Customers within the purport of these General Terms and Conditions of Business shall constitute both consumers and entrepreneurs.

II. Product description

We shall be liable for the quality and nature of our products solely on the basis of the product descriptions which are either enclosed with a delivery of goods or which can be viewed by customers at our offices or on our website (<https://www.business-excellence-network.com/>) prior to the purchase of a product. In addition, any public statements which may be made by BEX, manufacturers and assistants shall be non binding and shall not issue in any legal consequences whatsoever.

III. Quotations

1. Quotations on the part of BEX shall be subject to change without notice and non binding. No declarations of acceptance or any orders shall be legally valid unless they are confirmed in writing or by telex by BEX.
2. For individual technical sectors, we shall reserve the right to supplement or revise these General Terms and Conditions of Business by means of special terms and conditions.
3. Insofar as a customer orders goods electronically, the contract wording shall be saved by BEX and, upon request, forwarded to such customer together with a copy of these General Terms and Conditions of Business.

IV. Deliveries

1. If at all possible, any delivery dates which we cite shall be met. However, unless we have indicated that such delivery dates constitute a special written undertaking or unless a firm deal has been agreed, they shall also be non-binding.
2. Partial deliveries shall be admissible. Every such partial delivery shall be deemed to constitute a separate business transaction within the purport of these General Terms and Conditions of Business.
3. Given the existence of any other terms and conditions of purchase the most recent wording of the provisions contained in the Incoterms 2000 'C clauses' obtaining at any given time shall apply. These rules and regulations stipulated by the International Chamber of Commerce shall be deemed to constitute part and parcel of our General Terms and Conditions of Business. The Incoterms 2000 are available as ICC (International Chamber of Commerce-publications no. 560 ED).
 - In the event of a customer being an entrepreneur, the risk of the fortuitous loss and fortuitous deterioration of goods shall devolve upon the purchaser upon delivery or, in the case of sales shipment, upon the forwarder, the carrier or any other person or institution commissioned with the execution of such shipment upon the delivery of the goods.
 - In the event of a customer being a consumer, the risk of fortuitous loss and fortuitous deterioration of purchased goods shall, including in the case of sales shipment, not devolve upon the purchaser until the delivery of the same. The shipping costs shall invariably be borne by the purchaser.
 - Acceptance default on the part of a purchaser shall equate to delivery.

4. In the event that, following the expiry of an additional period of time which they have been set, a customer should decline to accept purchased goods, or in the event that the customer should expressly state in advance that they do not wish to accept such goods, BEX may demand compensation for non-performance. As a general rule, such compensation shall, without any specific proof being necessary, amount to 30 % of the total purchase price. However, the purchaser shall be free to evidence that no costs were incurred in connection with the non-acceptance of the goods in question (acceptance default) or that the costs which were incurred were lower than those indicated by BEX in the flat rate compensation amount.
5. Withdrawal from a contract by a customer shall only be possible after an additional period of time, as a general rule, two weeks, has been set. Insofar as legally admissible, compensation claims for failures to meet delivery deadlines shall be precluded under all circumstances. A customer may not withdraw from a contract in the event that an order which has been placed should involve a special customised product or procurement.
6. Delivery deadlines shall be extended given the initiation of measures within the framework of labour disputes, particularly strikes and lock-outs, and, given the materialisation of unforeseen hindrances lying outside BEX's sphere of influence, such as operational stoppages and delays in the delivery of important materials, as soon as such hindrances demonstrably exercise a major impact on the delivery of an item. This shall also apply in the event that such circumstances should materialise at subsuppliers. Delivery deadlines shall be extended in line with the duration of any such measures and hindrances.

BEX shall also not be responsible for any of the above-outlined circumstances in the event that they should materialise during a delay which has already occurred. As far as possible, BEX shall, in important cases, apprise a customer of the commencement and end of any such hindrances.

V. Remote sales contract with a revocation clause

1. A purchaser who is a consumer shall be entitled to revoke their declaration of intent predicated upon the conclusion of a contract within two weeks of the receipt of the ordered goods. It shall not be necessary for such revocation to include a reason. Such revocation shall be declared vis-à-vis the vendor in text form or by returning the goods in question; prompt dispatch shall suffice for deadline observation purposes.
2. Upon the exercise of their revocation right, a consumer shall be obliged to return the goods at issue provided that such goods can be dispatched in the form of a package. In the event of a revocation right being exercised, the consumer shall, given an order value of up to €40.00, bear the costs of returning goods unless the goods which were delivered were not the same as those which were ordered. Given an order value in excess of €40.00, the consumer shall not be required to bear the costs of returning goods.
3. A consumer shall render compensation for any deterioration which may have occurred in consequence of the intended utilisation of goods. A consumer may inspect goods on a cautious and careful basis. The consumer shall bear the cost of any depreciation which may occur in consequence of utilisation exceeding the scope of a pure inspection and as a result of which it shall no longer be possible to resell the goods at issue as "new".

VI. Contractual exclusion from liability

BEX shall not render any compensation for any incidences of prejudice which BEX, their legal representatives or vicarious agents occasion in consequence of slight negligence. This shall have no bearing upon any incidences of prejudice stemming from harm to life, body or health.

VII. Proprietary rights

1. In the case of contracts with consumers, we shall reserve our proprietary rights to goods until such time as the purchase price has been paid in full. In the case of contracts with entrepreneurs, we shall reserve our proprietary rights to goods until such time as all the claims stemming from the ongoing business relationships have been settled in full.
2. Prior to paying a purchase price in full, a customer shall undertake to apprise BEX without delay of any third party access to goods, e.g. in the event of seizure, any incidences of damage to and the destruction of goods. A customer shall advise us without delay of any change of ownership of goods and any change of their own place of residence.
3. Given a breach of contract on the part of a customer, particularly payment default or the breach of an obligation pursuant to subsection 1.) or 2.) of this provision, we shall be entitled to withdraw from the contract in question and request the return of the goods at issue.

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4. An entrepreneur shall be entitled to resell goods during the ordinary course of business. They shall, at this early juncture, actively assign to us all the claims to the amount of the invoice amount which shall accrue to them in consequence of resale by a third party. We shall accept such assignation. Subsequent to such assignation, an entrepreneur shall only be authorised to secure the settlement of such claims. We shall reserve the right to secure the settlement of such claims ourselves as soon as an entrepreneur fails to duly fulfil their payment obligations and defaults on payment.
5. An entrepreneur shall invariably process goods in our name and on our behalf. Given processing involving objects which are not our property, we shall acquire coownership of the new object in question in proportion to the value of the goods which we supplied in relation to the other processed objects. The same shall apply in the event of goods being blended with any other objects which are not our property.

VIII. Notices of defects

1. Entrepreneurs must notify us in writing of any obvious defects within a deadline of ten working days following the receipt of goods; otherwise, it shall not be possible to assert any warranty claims. Prompt dispatch shall suffice for deadline observation purposes. An entrepreneur shall bear the full burden of proof pertaining to all claim prerequisites, particularly for actual defects, the point in time of their detection and the promptness of their notification.
2. Consumers must apprise BEX in writing of any obvious defects within a deadline of two months following the point in time at which the non-contractual condition of goods was established. The receipt of notification by BEX shall determine the observation of such deadline. In the event of a consumer failing to submit such notification, these warranty rights shall expire two months subsequent to the detection of the defects at issue. This shall not apply given malice on the part of the vendor. The burden of proof pertaining to the detection date of a defect shall lie with the consumer. Should a consumer have been moved to purchase an object by inapplicable statements on the part of the manufacturer, they shall bear the burden of proof pertaining to their purchase decision. In the case of used goods, the consumer shall bear the burden of proof pertaining to the defectiveness of such goods.

IX. Warranty

1. In the event of a purchaser being an entrepreneur, BEX shall, in the first instance as they see fit, observe their warranty obligations for defects to goods by means of rectification or replacement.
2. In the event of a customer being a consumer, they shall initially have the option of choosing whether subsequent performance should be effected by rectification or replacement. However, BEX shall be entitled to reject the selected subsequent performance type in the event that it should only be possible in conjunction with disproportionate costs and the other subsequent performance type would not involve any considerable disadvantages for the consumer.
3. Should subsequent performance be unsuccessful, a customer may, as they see fit, request a reduction in remuneration (abatement) or the cancellation of the contract (withdrawal). However, given only a minor breach of contract, particularly given only minor defects, a customer shall not be entitled to such a withdrawal right.
4. In the event of a customer opting to withdraw from the contract on the grounds of the existence of a defect in title or a material defect following unsuccessful subsequent performance, the customer shall not be entitled to any additional compensation claims in consequence of such defect. Should a customer opt for compensation following unsuccessful subsequent performance, the goods at issue shall, in the event that it should be reasonably possible for the customer to accept such a course of action, remain with the customer. Compensation shall be limited to the difference between the purchase price and the value of a defective object. This shall not apply in the event of BEX having maliciously occasioned a breach of contract.
5. In the event of a customer being an entrepreneur, claims arising from defects – liability stemming from wilful intent shall be excluded – shall expire after one year. This expiry period shall commence upon the delivery of an object. In the event of a customer being a consumer, such expiry period shall total two years subsequent to the delivery of the goods at issue. This shall not apply in the event that the customer should have failed to notify a defect in good time (sub-section VIII. Notices of defect).
6. Should a customer receive defective assembly instructions, BEX shall merely be obliged to supply defect-free assembly instructions, and only obliged to do so in the event that, prior to assembly, such defective assembly instructions should preclude proper assembly.
7. A customer shall not receive from BEX any guarantees in the legal sense. This shall have no bearing upon manufacturers' guarantees.

8. Increased expenditure Insofar as expenditure increases during rectification due to the fact that, for example, subsequent to delivery a purchased object is removed to a place other than the place of residence or the commercial premises of the recipient, the company obliged to effect such rectification, namely BEX, shall not be required to bear such increased expenditure.

X. Terms and conditions of payment

1. The list prices which are in general force at the point in time of delivery shall apply, plus the value-added tax in force upon the conclusion of each contract, unless something to the contrary is expressly agreed in writing (confirmation of order). We shall not pay any taxes, charges, etc. which may be levied on a business transaction in the country of receipt. Any increases in duty, etc. subsequent to the conclusion of a contract shall be borne by the purchaser.
2. Our deliveries shall become due for payment no later than thirty days subsequent to the invoice date unless other terms and conditions of payment have been expressly agreed in writing. Cheques, bills of exchange and any other financial documents shall only be accepted as conditional payment and shall not alter their due date, in which connection any costs which arise shall be borne by the purchaser.
3. In the event of the payment deadline pursuant to item 2. being exceeded, BEX shall be entitled to the following rights:
 - Calculation of default interest to the amount of 5 % in excess of the base lending rate, plus costs for unsecured loans, vis-à-vis consumer; an entrepreneur shall pay interest on their financial debts to the amount of 8 % in excess of the base lending rate during the default period. BEX shall expressly reserve the right to evidence and assert a larger incidence of default prejudice.
 - Refusal to render any further deliveries, or cash on delivery, irrespective of all the payments which have previously been made.
 - Exercise of all the rights stemming from the extended proprietary rights.
 - Assertion of all other claims, irrespective of any previous agreements and due dates.
4. An application for the initiation of insolvency proceedings, the cessation of payments and major changes to the previously assumed assets and earnings shall be tantamount to payment default.
5. A customer shall only have a right of offset in the event that their counterclaims should have been established on a legally binding basis or accepted by BEX. A customer may only exercise a right of retention in the event of their counterclaim being predicated upon the same contractual relationship.
6. BEX shall be entitled to execute group offset transactions.

XI. Place of performance and jurisdiction

1. The place of performance shall be Göttingen.
2. The laws of the Federal Republic of Germany shall apply to these General Terms and Conditions of Business and the overall legal relationship obtaining between BEX and a customer. The provisions of the UN sales law shall not apply.
3. Insofar as a purchaser is a general merchant within the purport of the German Commercial Code, a public-law legal person or a public-law special fund, Göttingen, Ellwangen or Berlin shall, as we see fit, be the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.
4. In the event of any uncertainties materialising, insofar as mutual agreement obtains, every effort shall be made to settle such uncertainties by means of arbitration, enlisting the services of the local Chamber of Industry and Commerce in the process, or by means of mediation.
5. In the event that any individual provisions contained in a contract with a customer, including these General Terms and Conditions of Business, should be or become wholly or partially invalid, this shall have no bearing upon the validity of the remaining provisions. Any such wholly or partially invalid provision shall be superseded by a valid provision whose economic success most closely approximates to that of the invalid provision in question.
6. All claims – irrespective of the amount involved – shall be asserted at the district courts of the places of jurisdiction.