



Benz Alutec GmbH - Bahnhofstr. 109 - 72411 Bodelshausen

General Terms and Conditions of Delivery and Payment of Benz Alutec GmbH

Status: January 2021

I. Scope of Application

1. The following conditions of sale apply to all contracts concluded between the buyer and us for the delivery of goods. They also apply to all future business relationships, even if they are not explicitly agreed upon again. Deviating conditions of the buyer which we do not expressly recognize in writing are non-binding for us, even if we do not explicitly object to them. The following conditions of sale also apply if we perform the delivery to the buyer without reservation in full knowledge of conflicting or deviating conditions of the buyer.
2. All agreements made between the buyer and us for the execution of the purchase contracts are set down in writing in the contracts.

II. Offer and Conclusion of Contract

1. An order by the buyer, which is to be qualified as an offer to conclude a purchase contract, can be accepted by us within two weeks by sending an order confirmation or by dispatching the ordered products within the same period.
2. Our offers are subject to change and non-binding, unless we have explicitly designated them as binding.
3. We reserve property rights, copyrights, and other protective rights to all illustrations, calculations, drawings, and other documents created by us. The buyer may only pass these on to third parties with our written consent, regardless of whether we have marked them as confidential.

III. Terms of Payment

1. Our prices apply ex works excluding packaging, unless specified otherwise in the order confirmation. Statutory value-added tax (VAT) is not included in our prices. We will show statutory VAT separately on the invoice at the valid rate on the day of invoicing.
2. A discount deduction is only permissible with a special written agreement between us and the buyer. The purchase price is due for net payment (without deduction) immediately upon receipt of the invoice by the buyer, unless a different payment target arises from the order confirmation. Payment shall only be deemed made once we can dispose of the amount. In the case of check payments, payment is only considered made once the check has been cashed.
3. The buyer is only entitled to offset—even if notices of defects or counterclaims are asserted—if the counterclaims have been legally established, recognized by us, or are undisputed. The buyer is only authorized to exercise a right of retention if their counterclaim is based on the same contractual relationship.

IV. Time of Delivery and Performance

1. Delivery dates or deadlines that have not been expressly agreed upon as binding are exclusively non-binding indications. The delivery time specified by us only begins once all technical questions have been clarified. Likewise, the buyer must properly and timely fulfill all obligations incumbent upon them.
2. If the underlying purchase contract is a fixed transaction within the meaning of Section 286 para. 2 no. 2 BGB (German Civil Code) or Section 376 HGB (German Commercial Code), we are liable according to statutory provisions. The same applies if the buyer is entitled to assert the cessation of their interest in further contractual performance as a result of a delivery delay attributable to us. In this case, our liability is limited to the foreseeable, typically occurring damage, provided the delay in delivery is not based on an intentional breach of contract attributable to us, whereby fault on the part of our representatives, suppliers, or vicarious agents is attributable to us.
We are likewise liable to the buyer in the event of a delay in delivery according to statutory provisions if it is based on an intentional or grossly negligent breach of contract attributable to us, with fault of our representatives, suppliers, or vicarious agents being attributable to us. Our liability is limited to the foreseeable, typically occurring damage if the delay in delivery is not based on an intentional breach of contract for which we are responsible.
3. In the event that a delivery delay attributable to us is based on the culpable breach of an essential contractual obligation (cardinal duty), with fault of our representatives, suppliers, or vicarious agents being attributable to us, we are liable according to statutory provisions with the proviso that liability



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for damages in this case is limited to the foreseeable, typically occurring damage.

4. The buyer cannot claim compensation in the event of a delivery delay attributable to us.
5. Any further liability for a delivery delay attributable to us is excluded. Further statutory claims and rights of the buyer to which they are entitled in addition to the claim for damages due to a delivery delay attributable to us remain unaffected.
6. We are entitled to make partial deliveries and partial services at any time, provided this is reasonable for the customer.
7. If the buyer defaults on acceptance, we are entitled to demand compensation for the resulting damage and any extra expenses. The same applies if the buyer culpably breaches duties of cooperation. Upon occurrence of default of acceptance or default of debtor, the risk of accidental deterioration and accidental loss passes to the buyer.

V. Transfer of Risk – Shipment/Packaging

1. Loading and shipment take place uninsured at the risk of the buyer.
2. We take back transport and other packaging within the meaning of Section 15 para. 1 VerpackG (German Packaging Act) at the place of performance during normal business hours free of charge, unless agreed otherwise. The costs for transport and delivery of used packaging to our registered office shall be borne by the buyer. Alternatively, the buyer is entitled to properly recycle the packaging independently at their own cost; in this case, our obligation to take back packaging is deemed fulfilled. Exchange pallets (e.g., Euro pallets) are excluded from this regulation.
3. If shipment is delayed at the request of or through fault of the buyer, we store the goods at the cost and risk of the buyer. In this case, notice of readiness for shipment is equivalent to shipment.

VI. Warranty / Liability

1. Warranty claims of the buyer only exist if the buyer has properly complied with their inspection and notification obligations under Section 377 HGB.
2. Insofar as a defect in the goods attributable to us exists, we are obligated to supplementary performance—to the exclusion of the buyer's rights to withdraw from the contract or reduce the purchase price—unless we are entitled to refuse supplementary performance on the basis of statutory regulations. The buyer must grant us a reasonable period for supplementary performance. Supplementary performance can take place at the choice of the buyer by eliminating the defect (rectification) or delivering new goods. In the case of defect rectification, we bear the necessary expenses, provided these are not increased because the subject matter of the contract is located at a place other than the place of performance. If supplementary performance has failed, the buyer can, at their choice, demand a reduction of the purchase price or declare withdrawal from the contract.
Rectification is deemed to have failed after the second unsuccessful attempt, unless further rectification attempts are reasonable and acceptable to the buyer based on the subject matter of the contract.
Claims for damages under the following conditions due to the defect can only be asserted by the buyer after supplementary performance has failed, up to a maximum amount corresponding to the value of the defective subject matter of the contract.
The buyer's right to assert further claims for damages under the following conditions remains unaffected by this.
3. The buyer's warranty claims expire one year after delivery of the goods to the buyer, unless we have fraudulently concealed the defect; in this case, statutory regulations apply. Our obligations under Section VI Item 4 and Section VI Item 5 remain unaffected by this.
4. We are obligated according to statutory provisions to take back new goods or reduce the purchase price even without setting a deadline that would otherwise be required if the buyer's customer, as a consumer of the sold new movable item (consumer goods purchase), was able to demand that the buyer take back the goods or reduce the purchase price due to the defect, or if the buyer is faced with a recourse claim resulting therefrom. We are furthermore obligated to reimburse expenses of the buyer, in particular transport, travel, labor, and material costs, which the buyer had to bear in relation to the end consumer as part of supplementary performance due to a defect present upon transfer of risk from us to the buyer. The claim is excluded if the buyer has not properly met their inspection and notification duties under Section 377 HGB.
5. The obligation according to Section VI Item 4 is excluded insofar as the defect is due to advertising claims or other contractual agreements not originating from us, or if the buyer gave a special guarantee to the end consumer or customer.



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The obligation is likewise excluded if the buyer themselves was not obligated under statutory regulations to exercise warranty rights against the end consumer or customer, or failed to make this notification regarding a claim brought against them. This also applies if the buyer assumed warranties toward the end consumer or customer that exceed statutory requirements.

6. We are liable without limitation in accordance with statutory provisions for damages to life, body, and health resulting from a negligent or intentional breach of duty by us, our legal representatives, or our vicarious agents, as well as for damages covered by liability under the Product Liability Act. For damages not covered by sentence 1 resulting from intentional or grossly negligent contract breaches or deceit by us, our legal representatives, or our vicarious agents, we are liable according to statutory provisions. In this case, however, liability for damages is limited to foreseeable, typically occurring damage, provided we, our legal representatives, or vicarious agents did not act intentionally. To the extent that we issued a quality guarantee regarding the goods or parts thereof, we are also liable within the scope of this guarantee. For damages resulting from the lack of guaranteed quality but not occurring directly on the goods, we are only liable if the risk of such damage is obviously covered by the quality guarantee.
7. We are also liable for damages caused by simple negligence, provided the negligence concerns the breach of contractual duties whose compliance is of particular importance for achieving the purpose of the contract (cardinal duties). However, we are only liable insofar as the damages are typically associated with the contract and foreseeable.
8. Any further liability is excluded regardless of the legal nature of the asserted claim; this applies in particular to tortious claims or claims for reimbursement of futile expenses instead of performance; our liability according to Section IV Item 2 through Section IV Item 5 of this contract remains unaffected by this. To the extent that our liability is excluded or limited, this also applies to the personal liability of our employees, workers, staff, representatives, and vicarious agents.
9. The buyer's claims for damages due to a defect expire one year after delivery of the goods. This does not apply in the case of injuries to life, body, or health caused by us, our legal representatives, or our vicarious agents, or if we or our legal representatives acted intentionally or with gross negligence.

VII. Retention of Title

1. The delivered goods (reserved goods) remain our property until all claims—including all balance claims from current accounts—to which we are currently or in the future entitled against the buyer have been satisfied. In the event of conduct by the buyer in breach of contract (e.g., payment default), we have the right to reclaim the reserved goods after setting a reasonable deadline. If we take back the reserved goods, this constitutes a withdrawal from the contract. If we seize the reserved goods, this constitutes a withdrawal from the contract. We are entitled to realize the reserved goods after taking them back. After deducting a reasonable amount for realization costs, the realization proceeds shall be offset against the amounts owed to us by the buyer.
2. The buyer must treat the reserved goods with care and insure them sufficiently at replacement value against fire, water, and theft damage at their own expense.
3. The buyer is entitled to properly resell and/or use the reserved goods in the ordinary course of business, provided they are not in payment default.
Pledges or transfers of security are impermissible. Claims arising from resale or any other legal ground (insurance, tort) regarding the reserved goods (including all balance claims from current accounts) are hereby assigned to us in full by the buyer by way of security; we hereby accept the assignment. We revocably authorize the buyer to collect the claims assigned to us for their account in their own name. The collection authorization can be revoked at any time if the buyer does not properly meet their payment obligations. The buyer is also not authorized to assign this claim for the purpose of claim collection by way of factoring, unless the obligation of the factor is simultaneously established to render the consideration directly to us in the amount of the claims for as long as claims by us against the buyer still exist.
4. Processing or transformation of the reserved goods by the buyer is always carried out for us. If the reserved goods are processed with other items not belonging to us, we acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other processed items at the time of processing. For the new item created through processing, the same applies as for the reserved goods. In the event of inseparable mixing of the reserved goods with other items not belonging to us, we acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other mixed items at the time of mixing. If the buyer's item is to be regarded as the main item as a result of the mixing, the buyer



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and we agree that the buyer transfers proportional co-ownership of this item to us; we hereby accept the transfer. The buyer shall hold our sole or co-ownership thus created in safe custody for us.

5. In the event of third-party seizures of the reserved goods, in particular attachments, the buyer shall point out our ownership and notify us immediately so that we can enforce our property rights. Insofar as the third party is unable to reimburse us for the judicial or extrajudicial costs incurred in this connection, the buyer is liable for them.

VIII. Place of Performance, Place of Jurisdiction, Applicable Law

1. The place of performance and place of jurisdiction for deliveries and payments (including check and bill of exchange actions) as well as all disputes arising between us and the buyer from the purchase contracts concluded between us and them is our registered office, alternatively Tübingen. However, we are also entitled to sue the buyer at their place of residence and/or place of business.
2. The relationships between the contracting parties are governed exclusively by the law applicable in the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.