

General Terms and Conditions of Procurement of Bornack GmbH & Co. KG

1. General, scope of application

1.1 Our terms and conditions of procurement shall apply exclusively; general terms and conditions or T&Cs of sale deviating from or contracting them shall not be acknowledged, they are hereby contradicted. Our terms and conditions of procurement shall also apply to all future transactions, even if they are not expressly agreed again.

Our terms and conditions of procurement shall apply even if we accept your delivery without reservations despite knowledge of your contradicting or deviating terms and conditions.

1.2 All agreements made between us and yourselves for the performance of contracts have been recorded in this contract in writing.

1.3 Our terms and conditions of procurement shall only apply towards entrepreneurs pursuant to § 310 subsection 4 German Civil Code.

1.4 Our general terms and conditions of procurement shall apply subordinately and as a supplement in relation to quality agreements made with you.

2. Quotation, quotation documents, written form, deviating order confirmation

2.1 Quotations and estimates shall be free of charge, even if the provider produces them following a request from us.

2.2 Our know-how becoming known to you on the basis of our order may not be made accessible to third parties without our express written consent.

2.3 Our know-how is exclusively to be used for production on the basis of our order and shall be kept secret, Section 1.2. applying as a supplement.

2.4 Orders by us shall only be legally effective if they are placed in writing with legal effect. The same shall apply to addenda, amendments and side-agreements. Orders, addenda, amendments and side-agreements deviating herefrom shall be ineffective. The formal defect shall not be remedied by acceptance of your supply. Order confirmations deviating from our order are contradicted. Only our written order shall be decisive for the scope, contents and pricing of each delivery.

3. Prices, payment terms, rights of offset and retention, payment before expiry of complaint period

3.1 The price stated in our order shall be binding. If not agreed in writing to the contrary, the price stated in the order shall include delivery “franco domicile” and the necessary packaging units, for example pallets or grid boxes.

3.2 We can only process invoices and delivery papers if they match the requirements in our order and state the order and material numbers required there; you shall be responsible for all consequences of a failure to comply with this obligation to the extent that you do not prove that you are not answerable.

3.3. Invoices shall be submitted with all the proofs owed following complete and defect-free supply/service or acceptance. Payment shall be made following receipt of the invoice, not before performance of the contract, to the extent not agreed to the contrary, within 90 days from date of invoice without deduction.

3.4 All certifications of material tests or other documents to be submitted by you according to the contractual agreements shall be a part of the service owed and must reach us no later than with the invoice as a precondition for performance of the contract. Otherwise, payments shall not yet be due.

3.5 Rights to offset and retention shall accrue to us to the statutory scope.

3.6 Payment shall be made in each case subject to the outcome of our inspection of goods and quantities. Payment before the expiry of our examination and notification periods stated in section 8 shall not mean that we have examined the goods or quantities supplied by you, have waived the objection of deviations in quality or quantity or have approved the supply. Excess amounts paid as a result of established deviations in quality or quantity shall be reimbursed by you.

4. Deadlines, delivery time, part call, adaptation of supply quantities, part deliveries

4.1 The periods and deadlines stated in the order or in a supply call shall be binding unless agreed to the contrary.

4.2 You shall notify us in writing without delay if circumstances from which it can be seen that the agreed delivery period cannot be complied with occur or become recognisable.

4.3 In the event of arrears in supply, the statutory claims shall accrue to us. In particular, we shall be entitled to demand damages in lieu of performance and withdrawal following the fruitless expiry of a suitable period of grace. If we demand damages, you shall have the right to prove that you are not answerable for the breach of duty.

4.4 Up to 4 weeks before a delivery date, we shall be entitled to call quantities ordered for this delivery date in part quantities. We can state a later delivery date for the supply of the remaining delivery quantities not purchased as per the original delivery date. In part calls, your requirements shall be taken into account in a suitable way.

4.5 If the business development recedes on account of unforeseen incidents, so-called force majeure, we shall be entitled to adapt ordered supply quantities to our requirements up to 4 weeks before the delivery date, in which context your requirements shall be taken into account in a suitable way. If we make use of this right, no further rights shall accrue to you as a result of this adaptation of quantities.

4.6 Part supplies and part services shall require our prior approval. We reserve the right to acknowledge excess or short deliveries in individual cases. If excess deliveries occur without our prior acknowledgement, we shall be entitled to store them or to return them to you at your expense.

5. Contract penalty

If you fall into arrears in supply, you shall be obliged to pay 0.5 % up to a maximum of 5% of the order value as a contract penalty for each commenced week of arrears. Statutory claims from arrears exceeding this shall remain unaffected. If the contract penalty has become due, we shall have the right to claim it until settlement of the final payment.

6. Packaging, dispatch

6.1 Dispatch shall be free of freight, packaging costs and charges at your risk to the destination stated by us. If pricing "ex works" has been agreed as a deviation, you shall dispatch at the lowest cost in question, unless we have prescribed a specific form of transportation.

6.2 Hired packagings or containers of yours shall be provided to you for collection without delay after supply.

7. Assignment, retention of title

7.1 You can only assign your claims against us to third parties or have them collected by third parties with our prior written consent, unless it is a question of claims which are legally effective, ready for a decision to be made or undisputed. We cannot reject approval for unfair reasons.

7.2 We contradict all regulations of retention of title exceeding simple retention of title. They shall require our prior written consent in the individual case. If sub-suppliers nevertheless claim ownership rights, co-ownership rights or liens against us or have compulsory enforcement measures taken, we shall claim on you for all the damage incurred as a result.

8. Passage of risk, supply, notification of defects, documents

8.1 Risk shall pass to us when the delivery arrives at the destination stated, in cases of delivery with erection or assembly and following acceptance with other services to be rendered success-related. Our check of incoming goods shall be on a random basis and shall additionally extend to establishment of transport damage.

8.2 To the extent not agreed to the contrary, delivery shall be franco domicile.

8.3 We shall be obliged to examine the goods for all and any deviations in quality or quantity within a suitable period; the notification shall be in time if it reaches you within a period of 14 days for externally recognisable defects, starting from receipt of the goods, or within 14 days of discovery for other defects, in particular in the case of hidden defects.

8.4 You shall exactly state our order and material number on all dispatch papers and delivery notes; if this information is missing, we shall not be answerable for delays in processing.

9. Rights from defects, warranty, barring by limitation, guarantee, standards to be fulfilled

9.1 As a supplier, you owe defect-free supplies and services. They must in particular manifest the agreed property features, fulfil the purpose of use which is owed, the current state of the art, the generally acknowledged technical industrial medicine safety directives from authorities and specialist associations and be in harmony with the current environmental protection directives.

9.2 The statutory claims from defects shall accrue to us uncurtailed. In any case, we shall, at our choice, be entitled to demand subsequent performance by after-working, replacement supply or new production according to statutory directives. You shall indemnify us for the damage incurred and the expenditure necessary for subsequent performance. If subsequent performance has not taken place within a suitable period, has failed or setting a period was dispensable, we can withdraw from the agreement on account of remaining defects and demand damage in lieu of performance, reimbursement of vain expenditure or a price reduction. Rights from guarantees assumed shall remain unaffected. The right to damages, in particular that of damages in lieu of performance, shall remain expressly reserved.

9.3 In urgent cases with a risk of disproportionately high damage, we shall have the right to take the necessary measures ourselves in cases of defects at your risk and expense.

9.4 Our approval for diagrams, calculations or other technical documents of yours shall not affect your responsibility for defects and having to vouch for the guarantee obligations assumed by you.

9.5 If you acknowledge our claims from defects and provide a replacement or after-work, barring by limitation for claims from defects shall start to run new.

9.6 The period of barring shall be no less than 36 months starting from passage of risk, to the extent that no longer statutory or contractual period applies.

9.7 For contractual guarantee agreements, the agreed periods shall be decisive.

9.8 You assure that goods supplied by you fulfil all specifications, requirements or guidelines valid within the EU.

10. Product liability, indemnification, third-party liability insurance coverage

10.1 If you are responsible for product damage, you are obliged to indemnify us from third parties' claims to damages at first request to the extent that the cause can be found in your sphere of control and organisation and you are liable personally in the external relationship.

10.2 As part of your liability for damage in the sense of Sect. 10.1, you are also obliged to reimburse all and any expenditure pursuant to §§ 683, 670 German Civil Code, and also pursuant to §§ 830, 840, 426 German Civil Code, which results from or in connection with a recall action carried out by us. To the extent possible and reasonable, we shall inform you about the content and the scope of the recall measures to be taken and give you an opportunity of commenting.

Other statutory claims shall remain unaffected.

10.3 If not agreed to the contrary, you undertake to maintain a product liability insurance with a lump-sum coverage of EUR 10 million per personal damage/property damage; if further-reaching claims to damages accrue to us, they shall remain unaffected. You shall prove your insurance coverage to us upon request.

10.4 You shall carry out quality assurance of a suitable nature and scope which matches the current state of the art and shall prove it to us upon request.

11. Rights of use, property rights

11.1 You vouch for the fact that no third parties' rights are breached in connection with your supply.

11.2 You owe the granting of all rights of use necessary to achieve the purpose agreed in the contract. You shall be liable for defects in title according to the statutory directives.

11.3 Notwithstanding no. 10.2, you shall ensure that no industrial property rights of third parties, in particular patent rights, copyrights or other industrial property rights are breached by the intended use by us of the deliveries/services owed under the contract. If claims are made against us by a third party in this regard, you shall be obliged to indemnify us against these claims completely at first request. Over and above this, you shall undertake everything reasonably to be expected in order to put us in a position to carry out the contractual use without impairment of third parties.

11.4 Your indemnification duty shall relate to all expenditure necessarily incurred by us from or in connection with claims made by a third party.

11.5 The period of barring shall be ten years, starting from conclusion of the contract.

12. Non-disclosure

12.1 You shall be obliged without exception to keep all technical data, other documents and all information which you receive strictly secret. They may only be disclosed to third parties with our express written consent.

12.2 The obligation duty shall also survive fulfilment of the present contract; it shall expire when and insofar as the production or manufacturing knowledge contained in the technical data, other documents and information has become public domain. You shall obligate your employees and sub-suppliers accordingly.

13. Ownership, provisions, tools

13.1 All tools, diagrams, drafts and other documents provided to you shall remain our property. They may only be forwarded to third parties with our written approval. You shall treat them confidentially, keep them inaccessible for third parties and return them to us at any time upon request, albeit no later than without delay after the ending of the business relationship.

13.2 You may only use the products manufactured according to these documents or provided objects for the purpose of the contractual agreements concluded with you. We reserve ownership of provided objects. Processing or reshaping shall be done by you on our behalf.

13.3 We reserve ownership to all tools provided. You are obliged to use them exclusively for the production of the supplies ordered by us and shall insure them at your own expense against fire, water and theft damage. You shall notify us of disturbances without delay and carry out necessary maintenance and inspection work by agreement with us.

14. Exclusive place of jurisdiction, place of performance

14.1 Exclusive place of jurisdiction, also in bill, cheque and document proceedings, shall be Heilbronn County Court factually and local competent for our registered office in the first instance or Heilbronn Regional Court, dependent on the value involved in the litigation, in the event of the parties being fully-fledged merchants, public-law entities or public-law funds. We shall however be entitled to sue you at the court competent for your residence or registered office. The same shall apply if you have no general place of jurisdiction within Germany or you move your residence or registered office outside Germany after conclusion of the contract or your residence or registered office or customary abode is not known at the time of initiation of the proceedings.

14.2 Place of performance for all deliveries and services shall be our registered office or the place of use stated in deviation herefrom in the order.

15. No UN purchase law

The law of the Federal Republic of Germany shall apply exclusively or primarily, as the case may be. UN purchase law shall not be applicable.

16. Data protection, security

16.1 We shall record your personal data exclusively for the purpose for which you provide your data. Your personal data shall only be used within Bornack GmbH & Co. KG and Safepoint Sicherheitstechnik GmbH, hereinafter: Bornack Group, observing the data protection directives to be complied with.

If you input personal data such as your name, your address or communication information such as phone or fax numbers or mail addresses on our internet sites, this is exclusively done on a voluntary basis in each case. To the extent possible, you can use the contents and services offered on our internet sites without a statement of personal data.

16.2 You agree with the fact that we process, store and evaluate the data received in connection with the business relation within the Bornack Group, observing the data protection directives to be complied with and authorise us to do so.

Your personal data are neither made available nor sold to third parties.

16.3 Revocation of approval

You can revoke use, processing and transmission of your data for marketing purposes of the Bornack Group at any time for the future by a brief written notification to:

BORNACK GmbH & Co. KG
Bustadt 39
74360 Ilsfeld
Fon +49 (0)7062 / 269 00-0
Fax +49 (0)7062 / 269 00-550

or by e-mail to:
info (at) bornack.de.

Use of your data for marketing purposes of Bornack GmbH & Co. KG is done in harmony with the requirements of data protection law.

16.4 Right to information

You shall at any time have the right to demand information about the personal data stored with us with regard to your person.

16.5 Our data protection declaration and further-reaching data protection information can be accessed on our homepage under <http://www.bornack.de/impressum>. They apply as a supplement to the regulations made here in Sect. 16.