

General Terms and Conditions of Business
valid for deliveries and services
of the Bode Components GmbH
Stand: September 2017



If not otherwise agreed on in each individual case the following Delivery and Payment Terms of BODE Components GmbH (hereafter „Seller“) shall govern all supplies and services rendered by the Seller in commercial relationships to entrepreneurs; this also applies to the agreement on commercial terms, in particular to Incoterms. Any contrary terms and conditions of the Purchaser are hereby expressly rejected. Any such terms and conditions of purchase exclusively apply if they have been accepted and confirmed in writing by the Seller; silence on behalf of the Seller shall neither be deemed as acceptance nor consent. The acceptance of the goods or services represents the acceptance of the Seller's terms and conditions.

1. Prices/Terms of Payment, Offers, Provision of Products

- 1.1 The Seller charges the prices valid on the day of delivery. If not indicated otherwise, the prices are charged in EURO plus the then statutory value added tax. If not otherwise agreed upon, the prices apply ex works excluding packing. The shipping costs, especially the costs for special or express delivery and bulky deliveries, are to be borne by the Purchaser. The day of delivery is the day on which the product(s) is/are dispatched at the factory or the Seller's warehouse. If so agreed upon, the product(s) can be collected by the Purchaser at the Seller's premises during the Seller's normal office hours.
- 1.2 Principally, a discount of 2 % is granted on all invoices paid within 10 days after delivery. Invoices are to be paid net within 30 days after delivery. Invoices relating to effected installations or repairs are due prompt net.
- 1.3 The minimum order is 100.00 euros net (value of goods). For orders below this value the seller is entitled to make a minimum order surcharge amounting to the difference in accounting.
- 1.4 Any liens and set-off rights of the Purchaser are excluded unless the Purchaser is entitled to undisputed or legally established claims.
- 1.5 In the event of payments being delayed all legal penalties for default take effect without the Seller being required to issue a respective reminder. The Seller expressly reserves the right to charge interest on arrears to the amount of the interests charged by the Seller's principal banker provided these interests exceed the legally stipulated interest rate of 8 percentage points above base lending rate. Furthermore, the overall balance will then be immediately payable independent of any payment terms granted. Furthermore, the Seller is entitled to request the advance payment of or the provision of a security for any outstanding deliveries and to rescind from the contract after the Purchaser fails to meet the Seller's request within a reasonable period of time and to claim damages for non-performance.
- 1.6 In case of custom-made products and express deliveries, the Seller reserves the right to charge a reasonable excess on the amount invoiced.
- 1.7 If not indicated otherwise on the Seller's written offers, all offers are principally subject to change without notice. Any order confirmations on behalf of the Seller are considered to be binding if not opposed to by the Purchaser in writing within two (2) working days after the receipt of the order confirmation. The implementation of any modifications proposed and brought forward by the Purchaser and being received by the Seller after the expiry of the aforementioned period, require a separate individual agreement between the two parties also negotiating all expenses so far incurred with the Seller.
- 1.8 A provision of the products for call-off orders is possible, requires, however, a separate written agreement with the Seller. The Seller reserves the right to charge the Purchaser with both the amount due for the total quantity of products ordered and the costs related to the provision of them upon the expiry of a three-month period after the agreed production date.
- 1.9 Unless otherwise expressly agreed on in writing the Seller grants no warranty within the meaning of § 443 sect. 1 and 2 BGB (German Civil Code). Any reference to a specification or other descriptions of properties and DIN/EN standards represents no warranty within the meaning of § 443 sect. 1 and 2 BGB (German Civil Code) but only a description of performance.

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2. Delivery Dates, Force Majeure

- 2.1 The Seller shall endeavour to comply with the specified delivery periods.
- 2.2 The Seller's contractual obligations are under the provision of him being correctly and intime supplied by his suppliers.
- 2.3 Any unforeseeable and exceptional events (e.g. fire, explosion, lightning, order or inertia of authorities, strikes, industrial actions, lock-outs, breakdowns of machines, non-supply of primary products, war, rebellion, unavailability of transport means or delays in transport attributable to the forwarder) as well as such being beyond the Seller's control discharge the Seller of his obligation to deliver for the time any such events last, have effect or, the Seller is unable to perform due to the aforementioned reasons.
- 2.4 The Seller shall not be in default as long as the Purchaser is in default with the fulfilment of his contractual obligations including such arising from other contracts.

3. Non-acceptance

Any costs, damages and/or losses, in particular transport charges, transport risks, costs for expertises, travel expenses, etc., resulting from the Purchaser's unreasonable refusal to accept the Seller's products or services are to be borne by the Purchaser.

4. Place of Performance and Passage of Risk

The place of performance for the delivery and the payment is the place of business of the seller. Unless an additional written agreement has been established, the seller decides on the type of dispatch. The risk is transferred to the buyer as soon as the goods have been handed over to the buyer by the freight forwarder. When shipping by means of customer-specific forwarding or when picking up by the customer himself, the risk passes directly at the delivery to the customer or the respective forwarder.

5. Packing Material

Unless otherwise agreed on, the Seller exclusively accepts the return of packing material to the extent he is obliged to do so within in the meaning of the German Regulation on Packing.

6. Liabilities for Material Deficiencies and Notice of Defect, Duties of the Purchaser

- 6.1 Should any defects arise despite the Seller's utmost care in production, obvious defects are to be immediately – however, latest five (5) days after the receipt of the product(s) but in any case before it/them being processed or installed – reported to the Seller in writing as stipulated in § 377 HGB (German Commercial Code). Hidden defects are to be immediately reported to the Seller after their discovery. Should the Purchaser fail to meet his contractual obligation to notify the Seller about any such defect within the aforementioned period, the product(s) is/are deemed to be accepted. Any damages in transport are to be immediately – latest, however, two (2) working days after the receipt of the product(s) and before it/them being processed or installed – reported to the Seller in writing. Upon the discovery of a defect any further treatment, processing, installation and/or use of the product(s) is to be suspended, otherwise the Seller accepts no liability for any damages attributable to the non-observance of this provision.
- 6.2 In the event of any notices of defect, the Seller is principally entitled to examine the product(s) rejected. The Purchaser covenants to obtain the Seller's written consent prior to any return of the product(s) or taking of other actions.
- 6.3 Claims for material deficiencies will be in lapse twelve (12) months after the product(s) has/have been supplied to the Purchaser. Should the Purchaser request any longer warranty period – counted from the day of delivery to the Purchaser – any such extension of the warranty period requires a separate written agreement between the Seller and the Purchaser.
- 6.4 The processing and possible acceptance of any warranty and/or complaint requires that the product(s) are utilized as provided. Any modification to the product(s) made by the Purchaser results in the immediate expiration of the Seller's warranty.

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Should the product supplied be defective despite the Seller's due care in production and should this defect have existed already before the date the risk passed to the Purchaser, the Seller will – under the proviso of a complaint filed with the Seller in due course and time – at his exclusive discretion either repair or replace the product. The Seller is always to be granted the chance to remedy the defect within a reasonable period of time.

- 6.5 Should the remedy of the defect fail, the Purchaser is entitled to rescind from the contract - regardless of any claims for compensation – or reduce the payment. The Purchaser is not entitled to claim any compensation for futile expenditures. The Seller accepts liability to the extent of his performance. Warranty claims are not justified in case of insignificant derogations from the agreed nature of the product(s), insignificant impairment of the product's usability, normal tear or wear as well as damages arising after the passage of risk and being attributable to improper or negligent utilization, excessive stress, inappropriate equipment and facilities, faulty constructional work or special environmental conditions not having been covered by the contract. Should the Purchaser or any third party improperly maintain, repair, service or modify the product, these actions and any consequences resulting therefrom are not covered by the Seller's warranty. Furthermore, any warranty claim expires if the seal on adjustable parts is damaged. The Installation and Operating Instructions are to be strictly observed.
- 6.6 The Purchaser is not entitled to claim compensation for any expenses incurred in the remedy of a defect. This particularly refers to but is not limited to any transport, travel, labour, and material costs provided the increase of any such costs is attributable to the product being subsequently transported to a location other than the Purchaser's office unless any such transport is conform with the product's proper utilization.
- 6.7 The Purchaser is entitled to claim recourse against the Seller exclusively insofar as the Purchaser did not enter into any agreement with his customer exceeding the scope of the legally imperative warranty claims. As for the scope of the Purchaser's right to claim recourse, the provisions of paragraph 8 hereunder apply accordingly.
- 6.8 Any further reaching or other warranty/deficiency claims of the Purchaser against the Seller or his subcontractors not being covered by this paragraph are expressly excluded.
- 6.9 As for the Purchaser's additional rights to compensation for damages and/or expenses the provisions of paragraph 8 apply.
- 6.10 In the event of fraudulent concealment of a defect or the acceptance of a guarantee concerning the properties of the product at the time of risk passage within the meaning of § 444 BGB (German Civil Code) (Promise of the Seller that the object purchased features a certain property at the time of risk passage and the Seller's tort independent commitment to be liable for all consequences resulting from the object not featuring the properties promised) the Purchaser's rights are expressly limited to the respective provisions of the law.

7. Industrial Property Rights and Copyrights, Deficiencies in Title

- 7.1 If not otherwise agreed, the Seller exclusively guarantees that the product(s) is/are not protected by any industrial property right and/or copyright of third parties (hereafter „property rights“) in the country delivery is made to. Should any third party rightfully claim to the Purchaser that the Seller's contractual supplies represent an infringement of any property rights the Seller will be liable to the Purchaser to the extent set out hereafter and within the period set out under 6.3:
 - a) At his sole discretion the Seller will either, at his own expense, acquire the right of use for the concerned supplies or modify the supplied product(s) in a way that no property right of a third party is infringed or replace the respective product(s). In case, any of the aforementioned actions can not be implemented on accommodating terms the Purchaser is entitled to exercise his statutory right of rescission and the right to reduce the purchase price. Any compensation of futile expenditures can not be claimed by the Purchaser.
 - b) Any possibly arising claims for damages are subject to the provisions of paragraph 8.

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- c) The aforementioned duties of the Seller apply provided the Purchaser immediately notifies the Seller in writing about any third party claims, does not accept any statement of infringement, and the Seller's right to take defensive measures and/or enter into deeds of arrangement is not affected. In case the Purchase ceases the utilization of the product(s) supplied to reduce the damage or for any other substantial reason, the Purchaser is to inform the third party that this cease of use does not represent any acceptance of an infringement of property rights.
- 7.2 Any claims on behalf of the Purchaser are excluded if the infringement of property rights is attributable to him.
- 7.3 Moreover, any claims of the Purchaser are excluded if the infringement of property rights is attributable to the Purchaser's specifications, a utilization of the product not being foreseeable by the Seller, or to modifications made by the Purchaser or utilization of the product(s) supplied together with products not having been supplied by the Seller.
- 7.4 Moreover, the provisions of 6.5 and 6.10 apply to claims forming the subject of clause 7.1a in cases of infringement of property rights.
- 7.5 In the event of other deficiencies in title the provisions of clause 6 apply accordingly.
- 7.6 Any further reaching claims of the Purchaser against the Seller and his subcontractors relating to deficiencies in title or any claims other than those having been defined in paragraph 7 are expressly excluded
- 7.7 In the event of fraudulent concealment of a defect or the acceptance of a guarantee concerning the properties of the product at the time of risk passage within the meaning of § 444 BGB (German Civil Code) (Promise of the Seller that the object purchased features a certain property at the time of risk passage and the Seller's tort independent commitment to be liable for all consequences resulting from the object not featuring the properties promised) the Purchaser's rights are expressly limited to the respective provisions of the law.

8. Other Claims for Damages

- 8.1 In case of a preliminary, contractual and/or non-contractual infringement of his contractual duties – also in case of a deficient supply – the Seller will be liable to compensate any damages and expenditures – subject to any further contractual or legal liability provisions - only in the event any such infringement has been intentional or is attributable to gross negligence. In case of an infringement of a substantial contractual duty (a contractual duty the infringement of which endangers the achievement of the contracted purpose) the Seller will also be liable for any slightly negligent infringement. Except for any intentional infringement of contractual duties, the Seller's liability is however limited to the contract typical damage foreseeable at the time the contract was entered into. The Purchaser is not entitled to claim compensation for any futile expenditure.
- 8.2 In the event of damages caused by a delay being attributable to slight negligence, the Seller is only liable to an amount representing maximum 5 % of the agreed on net purchase price.
- 8.3 Notwithstanding the provisions of clause 8.2 the Seller will not be liable for any slight negligence except this is attributable to the infringement of any substantial contractual duties.
- 8.4 The exemptions from liability and limitations set out in clauses 8.1 and 8.3 do not apply if the Seller furnishes a guarantee within the meaning of § 444 BGB (German Civil Code), in cases of fraudulent concealment of a defect, damages representing any violation of life, body or health as well as the Seller being strictly liable in tort.
- 8.5 The provisions set out in clauses 8.1 to 8.4 apply to the same scope in favour of the Seller's bodies, legal representatives, managing and non-managing personnel.
- 8.6 All and any claims for damages and expenditures against the Seller become statute-barred after 12 months after delivery of the goods; in case of tortious liability or gross negligent ignorance of the facts justifying the claim or the person being liable for damages. This provision does not apply in case of malicious intent and those cases covered by clause 8.4.

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9. Reliability of Drawings, Figures, Dimensions and Weights

Unless expressly designated as binding, drawings, figures, dimensions, and weights only represent approximations. The Purchaser guarantees that the present detailed drawings do not infringe the property rights of any third party; the Purchaser covenants to indemnify the Seller in case of any claim for damages being brought forward. The Seller reserves the right to implement technical changes representing an improvement of the product or increasing its safety standard without further notice.

10. Documents, Seller's Duty to Inform

- 10.1 Any documents provided to the Purchaser must not be duplicated, used in a way other than for the agreed on purpose, or disclosed to any third party without the Seller's prior consent. "Third party" within the meaning of this provision is any company in which the Seller or Purchaser or their respective parent companies hold a direct or indirect interest of more than 50 %.
- 10.2 The Purchaser is obliged to independently inform himself on the Seller's website about new documents relevant to the products covered by the contract. For this purpose, the Purchaser receives online access to his or her individual "My Bode pages".

11. Reservation of Ownership

- 11.1 The product remains the property of the Seller until it has been paid for in full and also all future accounts receivable have been settled. The Purchaser is entitled to process and/or sell the product provided the following provisions are respected: To the extent to which the product(s) is/are processed or modified by the Purchaser the Seller remains the owner within the meaning of § 950 BGB (German Civil Code) and obtains the property in all semi-finished and finished products.
The processor exclusively acts as a bailee.
If the reserved products are attached to or processed with other objects not being the property of the Seller, the Seller obtains joint ownership in the new object to the share in value the reserved products represents in comparison to the other objects.
The product(s) may exclusively be sold in the ordinary and regular course of business provided any receivables resulting from onsales have not been beforehand assigned to third parties. Receivables from the onsale due to the Purchaser are deemed to be assigned to the Seller with the conclusion of the purchase contract and this also to the extent to which the product(s) has/have been combined with other objects or further processed. In any such case, the assigned receivables serve as security up to the value of the sold reserved products.
The Seller will not collect the assigned receivables unless the Purchaser does not meet his obligation to pay. The Purchaser, however, covenants to abandon the assigned debtor(s) upon the Seller's request and will inform him/them about the assignment. The Purchaser is entitled to collect the receivables unless he is otherwise instructed by the Seller. The amounts collected by the Purchaser are to be immediately transferred into the accounts of the Seller insofar and to the amount the Seller's receivables have become due.
- 11.2 Pledging and transferring the reserved products or assigned receivables respectively as a guarantee is not permitted. The Purchaser is to immediately notify the Seller about any third party seizures of the product(s) supplied under the reservation of title or any assigned receivables. The Seller covenants to release assigned receivables at his sole discretion provided they exceed the Seller's receivables to be secured by more than 20 % and result from supplies having been paid in full.
- 11.3 Should the Purchaser fail to meet his contractual obligations, especially in the event of delayed payments, the Seller is entitled to rescind from the contract or repurchase the product(s); the Purchaser is then obliged to surrender the respective product(s). The repurchase or enforcement of the Seller's reservation of title requires no withdrawal from the contract on behalf of the Seller; any such action does not represent any withdrawal from the contract on behalf of the Seller unless the Seller expressly declares his intention to do so.

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- 11.4 In case of sales to foreign countries in which the reservation of title agreed on in paragraph 11 and in accordance with the German law should not be applicable to the same extent, the product(s) supplied remain in the Seller's property until all his contract related receivables have been paid in full. Should also this reservation of title not be enforceable as provided by the German Law but other rights of the same effect be exercisable on the product(s), the Seller is entitled to exercise all and any of these rights. The Purchaser covenants to comprehensively assist and support the Seller in all actions the Seller intends to take in order to protect his ownership right or any other right of similar effect.

12. Applicable Law, Place of Litigation, Construction

- 12.1 For all legal relationships between the Seller and the Purchaser the Law of the Federal Republic of Germany governing the domestic legal relationships between two parties applies.
- 12.2 The place of litigation for both contractual parties – also in matters concerning bills of exchange – is at the Seller's principal place of business. If the Seller appears as plaintiff he is entitled to sue the Purchaser also at the latter's principal place of business.
- 12.3 These provisions shall be construed under the Law of the Federal Republic of Germany. Should the German version of these provisions differ from any translation, the German version takes precedence.

13. Partial Invalidity

Should individual provisions of these Terms and Conditions be or become fully or partly invalid this shall not affect the validity of the remaining provisions.
Any invalid provision shall be replaced by such a provision coming most closely to the intended economic effect.

Duesseldorf, September 2017