

# **General Terms and Conditions of b-drives GmbH**

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## **§ 1 Scope, form**

(1) These General Terms and Conditions (GTCs) apply to all our business relationships with our customers ("Buyers"). The GTCs shall only apply if the Buyer is an entrepreneur (§ 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCs shall apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 651 of the BGB). Unless otherwise agreed, the GTCs in the version valid at the time of the Buyer's order or in any case in the version last notified to him in text form shall also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case.

(3) Our GTCs shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation and in the knowledge of the Buyer's GTCs.

(4) Individual agreements made with the Buyer in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these GTCs. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements.

(5) Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in case of doubt about the legitimacy of the declarant, shall remain unaffected.

(6) References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCs.

## **§ 2 Conclusion of contract**

(1) Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve property rights and copyrights.

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(2) The order of goods by the Buyer is considered a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 3 weeks of its receipt by us.

(3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Buyer.

### **§ 3 Delivery period and delay in delivery**

(1) The delivery period shall be agreed individually or stated by us upon acceptance of the order.

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of performance), we shall inform the Buyer of this without delay and at the same time notify the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately refund any consideration already paid by the Buyer. A case of non-availability of performance in this sense shall be deemed to be in particular the non-timely self-delivery by our supplier if we have concluded a congruent covering transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Buyer is required. If we are in default of delivery, the Buyer may demand lump-sum compensation for the damage caused by the default. The lump sum for damages shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but in total not more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Buyer has not suffered any damage or that the damage is significantly less than the aforementioned lump sum.

(4) The rights of the Buyer pursuant to § 8 of these GTCs and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

(5) Delays in delivery and performance due to force majeure, important operational matters and due to events whose causes are outside our sphere of influence shall entitle us to postpone the delivery or performance for the duration of the hindrance plus a reasonable start-up period. This also applies if such events occur at our suppliers or during an already existing delay. If the hindrance lasts longer than 3 months, the Buyer as well as we are entitled to withdraw from the contract with regard to the part not yet

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fulfilled. We shall inform the Buyer as soon as possible of the beginning and end of such impediments.

### **§ 4 Delivery, transfer of risk, acceptance, default of acceptance**

(1) Delivery shall be ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Buyer, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the shipment. Insofar as acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. The same applies to handover or acceptance if the Buyer is in default of acceptance.

(3) If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). In this case, we shall charge a lump-sum compensation in the amount of 0.5% of the delivery value per calendar week up to a maximum of 5% in total or 10% in the case of final non-acceptance, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch.

The proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The Buyer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

### **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex warehouse, plus statutory VAT.

(2) In the case of a sale by delivery to a place other than the place of performance (§ 4 para. 1), the Buyer shall bear the transport costs ex warehouse. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

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(3) The purchase price is due and payable within 14 days from the date of invoice and delivery or acceptance of the goods. However, we are entitled at any time, also within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

(4) Upon expiry of the aforementioned payment deadline, the Buyer shall be in default. During the period of default, the purchase price shall bear interest at the applicable statutory default interest rate. We reserve the right to assert further damage caused by delay. With respect to merchants, our claim to the commercial maturity interest (§ 353 of the German Commercial Code (HGB)) remains unaffected.

(5) The Buyer shall only be entitled to rights of set-off or retention insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the counter rights of the Buyer shall remain unaffected, in particular pursuant to § 7 para. 6 sentence 2 of these GTCs.

(6) If it becomes apparent after the conclusion of the contract (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardised by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 of BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare rescission immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

### **§ 6 Retention of title**

(1) We shall retain title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties have access to the goods belonging to us (e.g. seizures).

(3) In the event of conduct by the Buyer in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have first unsuccessfully set the Buyer a reasonable deadline for payment

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or if such a deadline is dispensable according to the statutory provisions.

(4) Until revoked in accordance with (c) below, the Buyer is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title extends to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The Buyer hereby assigns to us by way of security the claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the Buyer mentioned in para. 2 shall also apply with regard to the assigned claims.

(c) The Buyer remains authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right pursuant to para. 3. If this is the case, however, we may demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the Buyer's authority to further sell and process the goods subject to retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

### **§ 7 Buyer's claims for defects**

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions) on the part of the Seller, unless otherwise stipulated below. In all cases, the special statutory provisions for final delivery of the goods to a consumer (supplier recourse pursuant to §§ 478, 479 of BGB) shall remain unaffected.

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(2) The basis of our liability for defects is primarily the agreement reached on the quality of the goods. All product descriptions which are the subject of the individual contract or which have been made public by us (in particular in catalogues or on our Internet homepage) shall be deemed to be an agreement on the quality of the goods.

(3) Insofar as the quality has not been agreed, an assessment shall be made according to the statutory regulations as to whether a defect is present or not (§ 434 para. 1 p. 2 and 3 of BGB). However, we accept no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) The Buyer's claims for defects presuppose, in addition to proper use, that he has fulfilled his statutory obligations to inspect and give notice of defects (§§ 377, 381 of HGB). If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 5 working days from delivery and defects not recognisable during inspection within the same period after discovery. If the Buyer fails to properly inspect the goods and/or give notice of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, we may first choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse subsequent performance under the statutory conditions remains unaffected. This applies in particular to the case of disproportionality.

(6) We are entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.

(7) The Buyer must give us the time and opportunity necessary for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions.

(8) We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, if a defect is actually present. Otherwise, we may demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognisable to the Buyer.

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(9) In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Buyer has the right to remedy the defect himself and to demand reimbursement from us of the expenses objectively necessary for this purpose. We must be informed immediately of any such self-remedy, if possible in advance. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent performance according to the statutory provisions.

(10) If the supplementary performance has failed or a reasonable deadline to be set by the Buyer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

(11) Claims of the Buyer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with § 8 and are otherwise excluded.

### **§ 8 Other liability**

(1) Insofar as nothing to the contrary arises from these GTCs including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

(2) We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in own affairs),

a) for damages resulting from injury to life, body or health,

b) for damages arising from the not inconsiderable breach of a material contractual obligation (obligation whose fulfilment is essential to the proper performance of the contract and on whose observance the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from para. 2 shall also apply in the event of breaches of duty by or in favour of persons for whose fault we are responsible in accordance with statutory provisions. They do not apply insofar as we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the Buyer under the Product Liability Act.

(4) Due to a breach of duty which does not consist of a defect, the Buyer may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination on the part of the Buyer (in particular according to §§ 651, 649 of BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

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### **§ 9 Limitation**

(1) Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) However, if the goods are a building or an object which has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (§ 438 para. 1 no. 2 of BGB). Other special statutory provisions on limitation (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 479 of BGB) shall also remain unaffected.

(3) The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages on the part of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 of BGB) would lead to a shorter limitation period in individual cases. However, claims for damages by the Buyer pursuant to § 8 para. 2 sentence 1 and sentence 2(a) as well as pursuant to the Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

### **§ 10 Choice of law and place of jurisdiction**

(1) These GTCs and the contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Norderstedt. The same shall apply if the Buyer is an entrepreneur within the meaning of § 14 of BGB. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCs or a prior individual agreement or at the general place of jurisdiction of the Buyer. Overriding statutory provisions, in particular on exclusive competences, shall remain unaffected.

b-drives GmbH

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