

# General Terms and Conditions of Sale

## § 1 Scope

1. The following General Terms and Conditions of Sale are applicable to all our business transactions.
2. BWF Thermoforms exclusively apply these terms and conditions. Differing, contrary or additional terms and conditions shall not be applied, except BWF Thermoforms explicitly accepted them in writing. A written confirmation is required in any case, even if BWF Thermoforms are aware of contrary or additional conditions required by the customer, but nevertheless deliver the goods without reservation. BWF Thermoforms do not acknowledge or accept contrary or additional conditions if referring to statements made by the Customer containing their or a third party's General Terms and Conditions or referring to them.
3. In Compliance with §§ 433, 651 German Civil Code (BGB), the General Terms and Conditions of Sale are applicable for contracts of sale and/or delivery of movable items ("Goods"), regardless whether the Goods are being produced by BWF Thermoforms or provided by sub-suppliers. These terms and conditions are also valid for any future contracts of sale and/or delivery signed between the two parties. Even if BWF Thermoforms are aware of differing or contrary conditions required by the customer, but nevertheless deliver the Goods without reservation, they are not obliged to explicitly refer to these terms and conditions. These terms and conditions are superior to any other agreements existing between BWF Thermoforms and the Customer. The Customer shall be informed immediately if the terms and conditions are being altered in any way.
4. Individual agreements with the Customer (including additional or complementary agreements as well as alterations) are superior to these terms and conditions. Individual agreements shall be confirmed in written form.
5. No legally relevant statement or declaration (e.g. regarding deadlines, defects, cancellations or reductions) which has to be made by the Customer after signing the contract shall be deemed accepted unless confirmed in writing.
6. References to legal regulations are stated for explanatory reasons only. German law applies to all BWF Thermoforms business transaction unless stated otherwise.

## § 2 Quotation, Conclusion of Contract and Quotation Documents

1. BWF Thermoforms quotations are subject to change and non-binding. In addition, our catalogues, technical documentation (pictures, drawings, blue prints, calculations, any reference to DIN standards as well as weight and dimensional measures) and other product details or data - including electronic data - are also subject to change and non-binding.
2. A purchase order sent by the Customer is a binding offer. A contract does not come into existence unless confirmed by BWF Thermoforms in writing or until the Goods are being delivered to the Customer. Confirming the receipt of an order shall not be seen as a binding order confirmation. Warranties are not binding unless explicitly guaranteed in writing. (

3. Pictures, drawings, calculations and the like listed in § 2 subsection 1 phrase 2 of these General Terms and Conditions of Sale remain our legal property, all rights reserved. They must be treated as confidential even if not explicitly marked with the expression "confidential". Therefore, they must not be shown to third parties, but protected in the way the Customer protects his own data. Documents must not be treated confidentially if (i) the Customer had the piece of information before BWF Thermoforms informed him and the Customer is in the position to prove this within four weeks after receiving the piece of information, (ii) the information had been publicly known before BWF Thermoforms informed the Customer or (iii) the information is being made generally known after BWF Thermoforms informed the Customer and without the Customer being involved in the act of making it known. The Customer does not acquire any property rights. The data must not be duplicated unless stated otherwise.
4. The Goods are subject to standard aberrations in terms of quantity or appearance. These aberrations must be accepted by the Customer except they are essential or unacceptable.

### §3 Prices and Payment

1. The quoted prices, plus compulsory VAT, are "Ex Works" prices only and do not include packing cost, unless stated otherwise.
2. The Customer must pay the freight costs arising from the sales shipment (see § 6 section 2 phrase 2 of these General Terms and Conditions of Sale) including possible insurance costs. Tolls, fees, taxes and other public charges must also be paid by the Customer. Property rights for packing (necessary for transport and other reasons) are being assigned to the Customer, BWF Thermoforms do not take back the packing.
3. The Customer shall pay for the Goods no later than 14 days after the issue date of the respective invoice and the delivery / pick-up date. The amount shall be paid net, plus VAT, unless agreed otherwise and confirmed in writing. Settling the invoice after more than 14 days means a delay in payment and therefore, the prices bear the current rate of interest for the period until the invoice is settled. Further claims because of any damage caused by the delay are reserved. In addition, BWF Thermoforms also claim interest after the due date according to § 353 German Commercial Code (HGB).

### § 4 Allowance and Retention

The Customer must only reduce the payable amount if his claims are unquestionable and proved legally valid. The Customer is only entitled to retain property based on counterclaims granted by the same contract. Receiving Goods with deficiencies, the Customer's rights remain unaffected by § 9 subsection 6 phrase 2 of these terms and conditions.

### § 5 Lead Time and Delivery

1. The stated lead times are approximate only and subject to change as well as self-supply, unless stated otherwise and confirmed in writing. Fixed lead time agreements refer to the date when the Goods are being handed over to the responsible logistics provider. BWF Thermoforms still respect the indicated lead time as long as the Goods are ready for shipment and if they had the Customer informed about that.
2. In case BWF Thermoforms are not able to deliver the Goods within the agreed lead time because of events, they have no influence on (unavailability of service), the Customer will be informed immediately and new lead times will be agreed. If the updated lead times cannot be realised either, BWF Thermoforms has the right to partially or entirely rescind the contract. If any payments have already been made, BWF Thermoforms must refund them promptly. A service is not available if BWF Thermoforms are not supplied with the Goods by the hired suppliers, if BWF Thermoforms agreed to a congruent hedging transaction, if neither BWF Thermoforms, nor the supplier are responsible for the unavailability or, in individual cases, if BWF Thermoforms are not obliged to provide the Goods.

## § 6 Delivery, Passing of Risk, Acceptance and Delay in Acceptance

1. The Customer must comply with all responsibilities in time and duly in order to ensure the delivery of the Goods. All rights to make a plea in terms of the default in contract are reserved.
2. BWF Thermoforms deliver "Ex Works", the BWF Thermoforms premises being the place of fulfillment. On request, the Goods will be shipped to another destination. All costs arising from this shipment shall be paid by the Customer. BWF Thermoforms is entitled to choose the means of shipment, e.g. the logistics provider, packing, etc.
3. The risk of accidentally losing or worsening the Goods is being passed to the Customer at the time of acceptance. In compliance with § 6 subsection 2 phrase 2 of these terms and conditions, the risk of accidentally losing or worsening the Goods is already being passed to the logistics provider during the delivery. The risk is being passed simultaneously with the acceptance, if not stated otherwise. The regulations of the Act of Work and Labour are also applicable. The handover, respective takeover, will be considered as acceptance even if the customer is in delay of the acceptance.
4. If the Customer accepts the Goods too late, does not comply with agreed actions or delays the delivery because of any other reason, BWF Thermoforms are entitled to charge the Customer with all additional costs (e.g. storage charges). In general, the measure for the reimbursement of expenses is 1% of the contract value in EUR per day, starting with the first day of the agreed delivery time or with the Goods being ready for dispatch.
5. Providing evidence for more intensive claims and other legal claims (especially the reimbursement of additional expenses, appropriate indemnities as well as cancellations) remain unaffected. However, the standard measure shall be deducted from further claims. The Customer may provide evidence that there did not arise any or only substantially less loss for BWF Thermoforms than covered by the standard measure for reimbursement.

## § 7 Reservation of Title

1. The Goods remain BWF Thermoforms' property unless all current and future claims arising from the contract of sale and ongoing business transactions (secured claims) are completely settled.
2. The Goods, BWF Thermoforms reserved the title for, must neither be pawned to a third party nor must the ownership be transferred unless all open payments have been settled. The Customer shall immediately inform BWF Thermoforms if and when third parties have access to BWF Thermoforms property.
3. In case the Customer does not comply with the contract, e.g. does not pay the due price, BWF Thermoforms are entitled to rescind the contract in compliance with all legal regulations and claim the return of the Goods based on the reserved title and the rescindment. This right can only be applied if the Customer had been informed about an appropriate time limit for the settlement of the invoice without success or if such a time limit is not necessary according to legal regulations.
4. The Goods shall be handled carefully, insured and, if necessary, sent back to BWF Thermoforms, given the original packing.
5. Unless the due amount has been settled completely, BWF Thermoforms must be immediately informed in case the Goods become subject to third party rights or if there arises any interference from a third party.
6. Within the standard course of business, the Customer may resell and/or process the Goods despite the reservation of title in compliance with the sections below.
  - a. A product resulting from processing, mixing and combining the purchased Goods becomes subject to the reservation of title, BWF Thermoforms being the manufacturer. In case Goods supplied by BWF Thermoforms are processed, mixed or combined with goods provided by other suppliers who have also reserved the title of their goods, the end product results in a joint ownership. The end product is subject to the same regulations as the provided Goods whose titles are reserved.

- b. All claims against third parties, arising from reselling the Goods or selling the end product, are being assigned to us (completely or partially) and BWF Thermoforms accept the cession. The Customer's responsibilities listed in § 7 subsection 2 of these terms and conditions are also applicable for all resigned claims.
- c. However, the Customer's right to collect the debt remains unaffected. BWF Thermoforms must not collect the debt unless the Customer is unable to comply with the obligation to pay, unless there is a default in payment, unless there is a petition for insolvency or any other reason for mistrusting their performance. In case one of these presuppositions does apply, the Customer shall disclose all resigned debts and the respective debtor, give all necessary information and hand over all corresponding documents as well as inform the debtor about the cession.
- d. Does the realisable value of the assets exceed the claims of BWF Thermoforms for more than 10%, the Customer shall be entitled to claim more assets.

## § 8 Moulds and Tooling

- 1. BWF Thermoforms are and remain the owner of all moulds and tooling produced by BWF Thermoforms or third parties which are necessary to provide the Customer with plastic parts. In order to ensure possible follow-up orders, BWF Thermoforms gratuitously store the moulds and tooling for two years after the last official order. At the end of the two-year period, the moulds and tooling can be stored in case the Customer is willing to pay storage costs. BWF Thermoforms shall inform the Customer at least one month prior to the end of the storage period in writing about its expiration date.
- 2. Any agreement stating that the Customer will become the owner of the moulds or tooling must be documented in writing. The ownership of the moulds or tooling is being transferred to the Customer after the payable amount explicitly stated in the order has been settled. In case there is no extra price for the moulds or tooling listed in the quotation, the ownership is being transferred to the Customer after the due amount for the plastic forms or plastic parts has been settled. In case such an agreement is made after placing the order, the Customer will become the owner of the moulds or tooling as soon as the agreed amount stated in the additional agreement will have been settled. Handing over the moulds or tooling to the Customer can be replaced by storing the parts on BWF Thermoforms premises (see subsection 1). BWF Thermoforms are only in possession of the moulds and tooling while storing them, the moulds and tooling being marked as property of the Customer and, if requested and paid by the Customer, insured.
- 3. In compliance with § 8 subsection 1 and 2 of these terms and conditions, all moulds and tooling will be exclusively used for realising the Customer's orders.
- 4. All changes regarding moulds and tooling which are being requested by the Customer after placing the order must be charged with additional costs. Changes and all additional costs arising from these changes shall be documented in writing

## § 9 Warranty

- 1. All common legal regulations shall be applicable for any possible material and legal defects (including wrong and short deliveries as well as incorrect assembly or bad manuals), unless stated otherwise. In compliance with §§ 478, 479 German Civil Code and the recourse for suppliers, all agreements in terms of deliveries for end users shall remain unaffected.
- 2. BWF Thermoforms warranties are based on the defined properties of the Goods as previously agreed upon. All product descriptions which are subject to the respective contract shall be seen as agreements on the properties of the Goods regardless whether the descriptions are provided by the Customer, the Manufacturer or BWF Thermoforms.
- 3. Defects shall be assessed in compliance with § 434 subsection 1 page 2 and 3 German Civil Code, unless the properties have been explicitly defined. BWF Thermoforms do not assume liability for any public statements made by the Manufacturer or others (e.g. advertisements).

4. In compliance with §§ 377, 381 German Commercial Code (HGB), the Customer may only voice warranty claims if having complied with all legal responsibilities. All defects resulting from a thorough investigation or discovered afterwards must be immediately reported in writing. In order to be seen as reported immediately, the report has to be sent within two weeks, the mailing date being the important reference. BWF Thermoforms do not assume any liability for defects (incl. wrong or short delivery) which have not been discovered and/or reported within two weeks after receiving the Goods.
5. If the Goods are defective, BWF Thermoforms is entitled to choose between repairing the defective parts or replacing the Goods entirely. Nevertheless, the right to refuse any correctional actions remains unaffected.
6. BWF Thermoforms are entitled to claim the payment of the due price before realising any correctional actions. However, the Customer may retain a certain amount of the payable price, corresponding with the value of the defective Goods.
7. There shall be enough time and possibilities to realise any correctional actions. Additionally, the rejected Goods shall be handed over to BWF Thermoforms in order to permit a thorough investigation. In case the rejected Goods shall be replaced, the Customer shall also hand them over to BWF Thermoforms. The correctional actions do not include assembling or disassembling the rejected Goods, unless stated otherwise.
8. Given that the Goods are really defective, BWF Thermoforms settle all costs arising from testing and correcting the defect (e.g. transport costs, personnel expenses, material costs excluding costs for assembly). In case the claims prove to be unauthorised, BWF Thermoforms reserve the right to reclaim these costs.
9. The Customer may correct the defects himself if they endanger the operational safety or in order to prevent major damage. BWF Thermoforms must be informed about these corrections immediately (if possible prior to the correction) and can be charged for the costs if the claims are justified.
10. Given a material defect, the Customer can rescind the contract or reduce the stated price if the correctional actions fail or if a defined period of time in which the correctional actions should have been realised did pass or was not necessary.
11. Compensatory damage claims are only valid in compliance with § 9 of these terms and conditions

## § 10 Liability

1. BWF Thermoforms assume liability for any breach of the contract in compliance with the respective legal regulations, unless stated otherwise.
2. Damages can only be granted if the defects are caused intentionally or due to gross negligence. BWF Thermoforms assume liability for defects caused by slight negligence a) if they are affecting the life, the body or the health of somebody b) if they result from a major breach of the contract (i.e. not complying with agreements which have to be met in order to fulfil the contract); under such circumstances, BWF Thermoforms limit the liability to compensate only the foreseeable, typical defects.
3. All limitations in terms of liability, resulting from §10 subsection 2 of these terms and conditions and all claims uttered in compliance with the German Product Liability Act are applicable, unless we fraudulently concealed a defect or previously accepted liability for the properties of the Goods. (
4. If BWF Thermoforms is responsible for a breach of the contract which does not result in a defect, the Customer may rescind the contract. The Customer does not have the right to cancel the contract as stated in §§ 651, 649 German Civil Code (BGB), however, any other legal regulations and the resulting consequences are applicable.

## § 11 Statute of Limitations

1. Not complying with § 438 subsection 1 phrase 3 German Civil Code (BGB), BWF Thermoforms grants a general limitation period of one year after delivery (or acceptance) of the Goods for any claim resulting from material or legal defects.
2. The foresaid limitation periods from the Contracts for the Sale of Goods are also applicable for all contractual and non-contractual damage claims uttered by the Customer which are based on defective Goods, unless applying the standard legal limitation period according to §§ 195, 199 German Civil Code (BGB) would result in a shorter limitation period. However, the limitation periods granted in the German Product Liability Act remain unaffected. For any other claims made by the Customer in compliance with § 8 of these terms and conditions, the legal limitation periods are applicable.

## § 12 Governing Law and Jurisdiction

1. These terms and conditions and all privities between BWF Thermoforms and the Customer are subject to the governing German law, explicitly excluding international jurisdiction, especially the United Nations Convention on Contracts for the International Sale of Goods. Given that the chosen jurisdiction is in favour of the German law ineffective, all presuppositions and results of the reservation of title in compliance with § 7 of these terms and conditions are subject to the governing law at the respective place where the Goods are.
2. Memmingen is the only national and international place of jurisdiction and implementation for all legal disputes arising directly or indirectly from the contract if the Customer is seen as a merchant in terms of the German Commercial Code (HGB), a juridical person according to public law or a special public asset. BWF Thermoforms are also entitled to claim charges at the Customer's general place of jurisdiction.