

## GENERAL TERMS AND CONDITIONS

with special conditions for selection and consignment transactions

of

company

Friedrich Binder GmbH & Co. KG

Leonberger Straße 34

71297 Mönsheim

As of: May 2023

### **1. Scope**

- 1.1. These General Terms and Conditions of Business of the company Friedrich Binder GmbH & Co. KG (hereinafter referred to as the "Seller") shall apply exclusively to all sales (hereinafter referred to as the "Purchase Agreement" or "Purchase Agreements") made within the scope of the business operations of the company Friedrich Binder GmbH & Co. KG (hereinafter referred to as the "Seller") for the delivery of goods to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB) within the scope of their commercial or independent professional activities (hereinafter referred to as the "Customer"). These General Terms and Conditions shall also apply to all future purchase contracts and deliveries of the Seller to the Customer, even if they are not separately included again.
- 1.2. The Seller does not recognise conflicting or deviating General Terms and Conditions of the Customer, even if their validity is not expressly objected to in individual cases. The customer's general terms and conditions of business shall not apply even if the seller carries out deliveries to the customer without reservation in the knowledge of the customer's conflicting terms and conditions of business.

### **2. Precious metal accounts (metal accounts)**

- 2.1. Insofar as the Seller agrees, a metal account may be opened for precious metals, which shall be kept as a current account with the Seller. The metal account serves the purpose of facilitating settlement between the customer and the seller and, unless otherwise agreed in individual cases, is to be kept exclusively in credit. The customer has the right to request information on the status of his metal account at any time as well as the payment of his credit balance within a period of 14 days. The latter shall not apply in the event that the customer's metal credit balance is required for an order placed by the customer.

- 2.2. If agreed, the customer may pay for the metal components contained in the goods plus processing loss in the respective metal via a metal account instead of in euros (see clause 3.3.). Other price elements for the remaining components of the goods (in particular the facon price as well as other surcharges) shall always be paid in euros.
- 2.3.1. The Vendor itself has precious metal accounts at the Sparkasse Pforzheim as well as at various refineries to which the Customer may make deposits of precious metals. The seller can change the group of refineries where the customer can deposit precious metal. The Customer's deposit to such an account of the Vendor shall then be credited to the Customer's metal account with the Vendor.
- 2.3.2. With the agreement of the seller, the customer may also purchase precious metal from the seller for the purpose of settling a metal claim arising from an order. Payment for this shall be made against a separate invoice in euros. After receipt of the money, the quantity of precious metal purchased shall be credited to the customer's metal account with the seller.
- 2.4. If the Customer pays into a precious metal account of the Seller at a refinery, the Customer shall bear the risk that the refinery delivers the quantity of metal paid in by the Customer to the Seller. If the refinery does not deliver the quantity of metal to the Seller within one month after payment, in particular due to insolvency, no credit shall be made to the Customer's metal account held with the Seller or a chargeback shall be made. This shall not apply if the delivery by the Refinery is not made for reasons for which the Seller is responsible.

### **3. Offers, cost estimates, prices and terms of payment**

- 3.1. Offers made by the seller are always subject to change. This also applies to cost estimates.
- 3.2. If the Seller sends a written order confirmation for orders, this shall be authoritative for the order. If no order confirmation is sent, the invoice shall be deemed to be the order confirmation. If the customer has any objections to the content of the order confirmation, he must object to it without delay. Otherwise, the contract shall be concluded in accordance with the order confirmation.
- 3.3. If a split purchase price has been agreed with the customer in such a way that payment of a metal share is made via a metal account, the quantity of metal expected to be required shall be stated in the order confirmation. The metal account shall then be debited in the amount of the metal quantity actually processed plus a surcharge for the processing loss incurred during production to the extent agreed in each case (see section 2.2.).
- 3.4. When the Seller issues an invoice for the goods ordered, the quantity of precious metal to be paid as shown on the invoice shall be debited from the Customer's metal account with the Seller.

- 3.5. In the event of dispatch of the goods by the Vendor to the Customer or to a place specified by the Customer, the Customer shall bear the costs of packaging and dispatch, in particular the costs of freight, insurance and customs duties and other public charges, unless otherwise agreed. These shall be charged separately by the Seller.
- 3.6. If the agreed delivery time is more than four months after the conclusion of the contract, the Seller shall be entitled, in the event of cost increases due to increased material and raw material prices, wages and salaries, transport or energy costs, to demand a higher price within the scope of and in order to compensate for the stated cost increases, which shall be proven upon request. This shall only apply to the price to be paid by the customer in euros.
- 3.7. Cash payments on the part of the customer are regularly to be made to the account specified by the seller. Cash payments to employees of the Seller shall only be accepted by the Seller if an authorised representative of the Seller has previously confirmed in writing to the Customer that the employee is authorised to receive the cash payment.
- 3.8. The respective statutory value-added tax shall be charged separately and, insofar as such is incurred, shall be shown on the invoice.

#### **4. Delivery time and delivery**

- 4.1. Unless a delivery time has been agreed individually or stated by the Seller upon acceptance of the order, the delivery time shall be twelve weeks from conclusion of the contract.
- 4.2. If a case of force majeure occurs which temporarily makes it impossible or unreasonably difficult for the Seller or its upstream suppliers or vicarious agents to provide the contractual performance, the Seller shall be released from the performance obligation for the duration of the impediment to performance. The Vendor shall inform the Customer immediately of the occurrence and the expected duration of the impediment to performance. If the force majeure extends over a period of more than three months from the occurrence of the event, either party may withdraw from the contract.

Force majeure shall be all unforeseeable events or events beyond the Seller's control, the effects of which on the performance of the contract cannot be prevented by the Seller's reasonable efforts. These include, but are not limited to, war, warlike conditions, riot, revolution, embargo, official orders, industrial action, epidemics, pandemics, fire, natural disasters and shortages of energy, water or raw materials.

- 4.3. If goods cannot be delivered within the delivery period because the Seller is not supplied by its suppliers through no fault of its own despite their contractual obligation, section 4.2 shall apply accordingly.
- 4.4. If the customer cannot reasonably be expected to accept the later delivery of the goods as a result of a delay for which the seller is not responsible, the customer may withdraw from the purchase contract before the expiry of the period specified in clause 4.2.

4.5 In the cases of clauses 4.2 to 4.4, claims of the customer for damages are excluded.

## 5. Retention of title

5.1. The goods sold shall remain the property of the Seller until all liabilities arising from the business relationship between the Seller and the customer have been paid in full (reserved goods).

5.2 As long as ownership has not yet passed to the customer, the customer undertakes to treat the goods subject to retention of title with care and to insure them adequately at its own expense against robbery, burglary, theft, fire, breakage and water damage for the benefit of the seller. He assigns his claims against the insurance company arising in the event of damage in advance to the seller, who hereby accepts the assignment.

5.3.1. The customer is entitled to process and/or sell the goods subject to retention of title in the ordinary course of business as long as the customer is not in default of payment of its liabilities to the seller.

5.3.2. An ordinary course of business within the meaning of these terms and conditions shall not be deemed to exist if, in the case of disposals by the customer or other dispositions by the customer in favour of third parties, the assignability of its claims to third parties is excluded.

5.3.3. The customer is not entitled to pledge the reserved goods to third parties or to assign them by way of security.

5.4. The customer assigns the claims against the third party arising from the sale as security to the seller, who hereby accepts the assignment.

5.5.1. The seller revocably authorises the customer to collect the claims assigned to the seller for the seller's account in its own name. The right of the seller to collect the claims himself shall not be affected thereby. However, the Vendor shall not collect the receivables himself and shall not revoke the direct debit authorisation as long as the customer is not in default with his payment obligations towards the Vendor.

5.5.2. If the customer defaults on its payment obligations to the seller, the seller may demand that the customer discloses the assigned claims and the respective debtors, informs the respective debtors of the assignment and hands over all documents to the seller and provides all information required by the seller to assert the claims.

5.5.3. Without prejudice to the agreements in clauses 5.5.1. and 5.5.2., the Seller shall be entitled to revoke the direct debit authorisation vis-à-vis the Customer and to notify the Customer's debtor thereof if the Customer becomes insolvent, in particular if insolvency proceedings are applied for or opened against its assets.

5.6. The processing or transformation of the reserved goods by the customer shall always be carried out in the name of and on behalf of the Vendor. If the reserved goods are processed with other items which are not the property of the Vendor, the Vendor shall acquire co-ownership of the new item in the ratio of the value of the reserved goods to the other processed items at the time of processing. If the reserved goods are inseparably combined or mixed with other items

not belonging to the Seller, the Seller shall acquire co-ownership of the new item in the ratio of the value of the reserved goods to the other combined or mixed items at the time of combination or mixing. If the combination or mixing is carried out in such a way that the customer's item is to be regarded as the main item, it shall be deemed agreed that the customer transfers co-ownership to the seller on a pro rata basis. The Seller accepts this transfer. The customer shall hold the sole ownership or co-ownership of the item thus created in safe custody for the seller.

- 5.7. If the reserved goods are seized or if they are exposed to other interventions by third parties, the customer is obliged, as long as ownership has not yet passed to him, to inform the third party of the Vendor's ownership rights and to notify the Vendor immediately in writing so that the Vendor can enforce his ownership rights. The customer shall be liable for any judicial or extrajudicial costs incurred in this connection vis-à-vis the Vendor, unless the third party is able to reimburse the Vendor for such costs.
- 5.8. The Seller undertakes, at the request of the Customer, to release the securities to which it is entitled to the extent that the realisable value exceeds the value of the outstanding claims against the Customer by 10%; in this case, the Customer shall be responsible for selecting the securities to be released.

## **6. Warranty**

- 6.1. The customer is obliged to inspect the goods immediately and to notify the seller without delay of any recognisable defects or incompleteness of the delivered goods (§ 377 HGB). If a defect does not become apparent until later, the customer is obliged to notify the seller immediately after discovery. Otherwise the goods shall be deemed to have been approved.
- 6.2. The customer's warranty rights due to a defect in the delivered goods shall be governed by the statutory provisions, unless otherwise provided for in the following provisions in clause 7.
- 6.3. Unless otherwise agreed, the Seller does not give any guarantees for a certain quality of the goods, section 6.2. remains unaffected.

## **7. Liability of the seller**

- 7.1. Unless otherwise stipulated in this agreement, claims for damages or reimbursement of expenses of the customer against the seller, irrespective of the legal grounds, are excluded subject to the following provisions in clauses 7.2. to 7.4 (§ 478 BGB remains unaffected). This applies in particular to all contractual claims for damages (also from default), claims for damages from culpa in contrahendo, initiation of a contract or similar business contacts, due to other breaches of duty as well as for tortious claims for compensation for property damage and financial loss pursuant to §§ 823 ff.

BGB, claims for damages from product liability pursuant to §§ 823 ff. BGB as well as for claims for reimbursement of expenses of the customer instead of a claim for compensation of damage instead of performance.

The provisions pursuant to clause 7 shall also apply insofar as claims for damages by the customer are part of the seller's liability for defects vis-à-vis the customer.

- 7.2. The aforementioned limitations of liability and exclusions of liability pursuant to section 7.1. above shall not apply
  - (a) insofar as the cause of the damage is due to intent or gross negligence on the part of the Vendor or the Vendor's representatives or vicarious agents,
  - (b) in the event of a culpable breach of material contractual obligations on the part of the Vendor, the fulfilment of which is a prerequisite for the proper performance of the contract and on the fulfilment of which the Customer may rely, in which case the compensation for damages shall be limited to the damage typical for the contract and foreseeable at the time of conclusion of the contract,
  - (c) in cases of liability of the Seller under the Product Liability Act,
  - (d) in the event of fraudulent concealment of a material defect,
  - (e) bei arglistigem Verschweigen eines Sachmangels,
  - (f) in the event of damage due to a failure to meet a delivery date or a defect in the goods, insofar as the Seller has assured or guaranteed a fixed delivery date or a quality of the goods.
- 7.3. Claims for reimbursement of expenses by the customer under § 284 BGB are limited to the amount of the interest which the customer has in the performance of the contract.
- 7.4. The aforementioned limitations and exclusions of liability shall also apply in favour of the Seller's employees, legal representatives, organs and vicarious agents.

## 8. Limitation

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.

## 9. Rights of the seller

- 9.1. All rights (in particular property rights and copyrights and/or copyright exploitation rights as well as industrial property rights) to contractual documents (in particular drafts, drawings, brochures, catalogues, illustrations, calculations, product descriptions, etc.) provided to the customer within the scope of the business relationship as well as samples, models and prototypes shall - unless expressly agreed otherwise - be the exclusive property of the seller.

- 9.2. Quotation documents as well as samples, models and prototypes shall be returned to the Vendor immediately upon request if an order is not placed with the Vendor. The customer may not assert a right of retention in this respect.
- 9.3. Unless otherwise agreed, the Seller shall be entitled to all intellectual property and related rights, such as copyrights, patents or other industrial property rights, arising from the provision of services by the Seller to the Customer. Insofar as such intellectual property created in the course of the performance is required for the contractual use of the performance, the customer shall receive a non-exclusive, non-sublicensable and non-transferable right to use the intellectual property of the seller to the extent necessary to use the performance contractually owed by the seller, provided that the customer duly fulfils its contractual obligations towards the seller.

## **10. Infringement of the rights of third parties**

- 10.1. Insofar as the design of the goods is carried out by the Seller, the Seller shall be responsible for ensuring that no third-party rights are infringed.
- 10.2. Insofar as the design of the goods is specified by the customer, the responsibility for ensuring that no third-party rights are infringed lies with the customer. In these cases, the Seller is not obliged to carry out its own checks. In the event of a claim being made against the Vendor due to the infringement of third party rights, the Customer shall be obliged to indemnify the Vendor against all third party claims.

## **11. Rights of set-off and retention as well as assignment of claims on the part of the client**

- 11.1. The customer shall only have the right to offset or assert a right of retention against claims of the seller arising from a contract with the customer with or on the basis of counterclaims that are legally established, undisputed or recognised by the seller. The customer's counter rights in the event of defects in the delivery shall remain unaffected.
- 11.2. Claims against the Seller in respect of the deliveries or services to be provided by it may only be assigned with the prior written consent of the Seller.

## **12. Additional Conditions for Selection Transactions and Consignment Transactions**

- 12.1. The following conditions apply exclusively to selection and consignment transactions.  
The execution and maintenance of selection/consignment transactions shall be the sole responsibility and at the sole expense of the customer.
- 12.2. The establishment of a consignment warehouse is agreed individually. The purpose of setting up such a warehouse is to accelerate the delivery of so-called consignment goods to the customer.

- 12.3. The stock shall be recorded in a separate annex upon conclusion of the contract. The Seller is not obliged under this agreement to replenish the stock or to guarantee a minimum stock level.
- 12.4. With the handover of the selected goods/consignment goods to the customer or, in the case of dispatch to the carrier, any risk, in particular that of loss or destruction through no fault of the customer, shall pass to the customer.
- 12.5. The customer is obliged to ensure sufficient insurance cover for the selected goods/consignment goods at his own expense and to insure them in particular against robbery, burglary, theft, fire, breakage and water damage. He shall assign his claims against the insurance company arising in the event of damage in advance to the seller, who hereby accepts the assignment.
- 12.6. The customer is obliged to store the selected goods/consignment goods separately from other goods and to mark them as the property of the seller. The seller is entitled to take back individual or all selected goods/consignment goods at any time. The customer has no right of possession. The return shall be at the expense and risk of the customer.
- 12.7. The customer may not assert a right of retention against the seller's request for return.
- 12.8. The customer is obliged to check the selected goods/consignment goods upon delivery for quantity and freedom from defects, in particular for conformity with the specification including the article numbers, in accordance with the provisions of the German Commercial Code. Any defects shall be notified to the seller without delay, stating the article number. Defects that were not recognisable during the required inspection must be reported immediately after discovery.
- 12.9. The customer is entitled to remove consignment goods from the consignment warehouse for delivery to customers and to sell and transfer them to them. The customer may also sell and transfer ownership of consignment goods to buyers. There is a reservation of title to all selected goods/consignment goods in accordance with clause 5.
- 12.10. The purchase contract between the seller and the customer shall be concluded upon the customer's effective disposal of the selected goods/consignment goods in accordance with the price valid or agreed on the day of withdrawal. An effective disposal shall also be deemed to be the removal of consignment goods by the customer from the consignment warehouse within the framework of an existing contractual relationship.
- 12.11. The customer may only sell the selected goods/consignment goods within the scope of his ordinary business operations. The customer shall notify the seller of each transaction by e-mail or fax, stating the quantity of goods and the delivery time, by the 10th of each month at the latest. The allocation of the selected goods/consignment goods to the respective end customer shall be the sole responsibility of the customer.
- 12.12. On the basis of the reported consumption quantity, the Seller shall issue an invoice with the date of the reporting day. The invoice shall be settled by the customer in accordance with the agreed terms of payment.



- 12.13. The Seller shall be entitled to check and record the current stock of the selected goods/consignment goods or the consignment warehouse itself or through third parties at any time. For this purpose, the customer shall grant the seller access to its premises during normal business hours after making an appointment in advance. The appointment shall be announced with a lead time of at least one week.
- 12.14. In all other respects, the provisions of these General Terms and Conditions shall remain unaffected; in particular, the provisions on retention of title (Sections 5.1. to 5.8. shall apply).

### **13. Verbal agreements and ancillary agreements, written form**

- 13.1. No oral agreements or collateral agreements have been made. Amendments and supplements to a purchase contract as well as to these General Terms and Conditions of Business require a written agreement in order to be legally effective.
- 13.2. Insofar as these General Terms and Conditions require a declaration to be made in writing, transmission in text form shall be sufficient.

### **14. Choice of law, place of jurisdiction, intra-Community acquisition and language**

- 14.1. All purchase contracts including these General Terms and Conditions as well as all disputes arising from or in connection with such contracts (including General Terms and Conditions) shall be governed exclusively by the substantive law of the Federal Republic of Germany, excluding the conflict of laws rules. The CISG (UN Convention on Contracts for the International Sale of Goods) shall not apply. This shall also apply to the question of the formation, termination and any continuing effect after termination of the purchase contracts.
- 14.2. The place of performance for all obligations arising from all purchase contracts, including these General Terms and Conditions, is Mönsheim.
- 14.3. Pforzheim is agreed as the place of jurisdiction for all disputes arising from or in connection with all purchase contracts, including these General Terms and Conditions, unless another place of jurisdiction is mandatory due to statutory provisions. This also applies to the question of the conclusion, termination and continued effect after termination of the purchase contracts.
- 14.4. In the case of intra-Community acquisitions, customers from EC member states shall be obliged to compensate the seller for any damage that arises
  - due to tax offences committed by the customer or
  - due to the customer's failure to provide information or the provision of incorrect information about his taxable circumstances.

- 14.5. Even if a purchase contract and/or these General Terms and Conditions are translated into another language, only the German version of the respective purchase contract and the German version of these General Terms and Conditions shall remain binding.