

General Terms and Conditions (GTC)

I. Scope of Application of these GTC

1. The following GTC apply to this and all subsequent contracts of Big Dutchman – hereinafter referred to as BD. The right to make changes is reserved.
2. BD shall not be bound by contradicting GTC of the Customer. These GTC shall also apply when BD performs services being aware of contradicting conditions of the Customer, even if BD does not expressly object to them. Any additional obligations accepted by BD shall not affect the application of these sales conditions.

II. Conclusion of Contract

1. The Customer shall be bound by its purchase order for five weeks. Any and all purchase orders received also by BD's employees and subsequent amendments of contracts concluded will only take effect upon a written order acknowledgement by BD (hereinafter referred to as OA) or by the performance of an ordered service. Any other behaviour or silence does not create an obligation for BD. Employees of BD are not authorised to waive the obligation to make an OA or to make promises deviating from its contents.
2. The contract shall be deemed to be concluded with the contents of the OA, unless the Customer objects to the OA, in writing, to BD, within 7 calendar days after receipt of the OA, at the latest.

III. Duty to Cooperate in Contracts with Assembly Service

The Customer shall ensure an adequate access to the construction site and provide sufficient space for unloading and it shall create the structural requirements for the assembly work; assembly rooms shall be heated in winter; the Customer shall be obligated to provide electrical energy, water, lighting. The Customer shall create the preconditions to perform test runs.

IV. Obligations of the Company BD

1. BD shall not be obligated to advise the Customer. If the agreed services require more detailed provisions, BD shall be entitled to make such by taking into account its own interests and the recognisable interests of the Customer.
2. When assembly is required, BD may request the Customer to perform partial acceptances for self-contained parts of the subject matter of the contract after their completion. Furthermore, BD may request acceptance upon completion. In the event of material defects, the Customer shall be entitled to refuse the (partial) acceptance. Any contractual and statutory warranty claims for defects reserved by the Customer upon (partial) acceptance shall remain unaffected.
3. Preconditions for the compliance with deadlines on the part of BD are and the customer shall be in default of acceptance if (a) the Customer fails to comply with its duty of cooperation required to render the services; (b) the dispatch of goods is delayed due to circumstances for which the Customer is responsible; (c) the Customer fails to provide, in due time, any documents, approvals or releases to be obtained.
4. BD shall only be obligated to perform when the Customer has made the agreed down payment and has complied with all other obligations incumbent upon it. BD's additional rights shall remain unaffected if the Customer is responsible for the non-compliance with its obligations. The delivery term will be reasonably extended in the event of force majeure or other hindrances not caused by BD.
5. For sold goods, the risk shall pass to the Customer upon loading, irrespective of who performs the transport. In the event of a delay of dispatch caused by circumstances for which the Customer is responsible, the risk shall pass to the Customer upon notification of the readiness for dispatch. In the event of assembly services, the risk shall pass to the Customer upon acceptance of the goods.
6. Irrespective of any other arrangements, in particular an agreement on relating Incoterm clauses, BD shall not be obligated to organise the transport of the goods, to insure the goods, to obtain any certificates or documents not expressly agreed, to obtain the licences, approvals or other formality to be observed for import or export, or to perform the customs clearance, to bear public charges arising outside of Vechta, to comply with measuring and weight systems, packaging, identification or labelling provisions applicable outside of Vechta or to take back packaging material from the Customer.

V. Price and Payment

1. In the event of agreed assembly, the payment shall fall due, in full, upon acceptance. If the services are accepted in parts, the agreed payment shall be made for each part upon its acceptance.
2. Payments shall be made in Euros, at the date specified in the OA, and without discount and charges. The receipt of the payment by BD shall be decisive for the timeliness of the payment.
3. BD shall, at its own discretion, be entitled to set off payments received with receivables due from the Customer at the time of payment which are based on its own or assigned rights.
4. In the event of default of payment, the Customer will be charged a handling fee of EUR 10 for each dunning letter, the costs of a judicial or extrajudicial litigation as well as interests in the amount defined in Art. 288 of BGB (German Civil Code).
5. If the Customer is in default of payment or in the event of other serious indications that the payment is endangered, BD shall, notwithstanding further claims, be entitled to request immediate payment for deliveries already made and prepayment or payment upon delivery for future deliveries, at its own option. As an alternative, BD may request the provision of sufficient securities.
6. The Customer shall not be entitled to offsetting against claims for payment against BD, unless the Customer's counter claim is based on its own right and is either judicially determined, accepted by BD in writing or undisputed. The Customer shall only be entitled to a right of retention or any other objection, if BD commits a serious breach of its obligations arising from the same contractual relationship and failed to offer an adequate security.
7. This clause shall apply in the case that the contract value exceeds 500,000 Euro and the period from the stipulation of the contract until the final delivery is longer than seven months.
In the case that the purchase price for the primary material for steel and/or plastics should increase, in each case, compared to the indices: for steel: www.steelbb.com, (sheet metal Flat Products N.Europe domestic HDG – Ex Works), for plastics - www.kiweb.de (price chart KI polymer prices PP copolymers – S.) by only up to 10% after the conclusion of the contract, the net price for the object of purchase shall remain unchanged.
In the case that the purchase price for the primary material for steel and/or plastics should increase, in each case, compared to the starting point mentioned above by more than 10% within the period from the signing of the contract to the calculation of the order, the net price (net value of the goods) for the object of purchase shall increase by 1.25% for each commenced 5% beyond the limit of 10% with regard to the respective ratio of material expenses (steel: 66%, plastics: 34% of the net purchase price for the object of purchase).
In the case that the purchase price for the primary material for steel and/or plastics should increase by more than 15%, but not more than 20% compared to the starting point, the net purchase price for the object of purchase shall increase by 2.5% of 66% or of 34% of the net purchase price for the object of purchase.

VI. Retention of Title

1. Goods delivered shall remain the property of BD until the Customer has fulfilled any and all of BD's claims arising from the business relationship, including claims arising in future under contracts concluded simultaneously or later.
2. In the event of resale of the goods under retention of title, the Customer shall be obligated to disclose BD's retention of title and to pass it on in a way that BD remains the owner on account of retention of title. Claims arising from resale are herewith assigned to BD. Income from resale shall be deemed to be received for BD and shall be paid to BD insofar as BD has outstanding debts. The Customer shall support BD in all legally admissible measures required to protect BD's property in the relating country. Any additional costs incurred as a result shall be borne by the buyer.
3. If the Customer violates the contract, in particular in the event of default of payment, BD shall be entitled to take the delivered objects back. Such repossession shall not be considered a withdrawing from the contract, unless BD expressly stated it in writing.
4. BD undertakes to release securities if and insofar as their value exceeds 120 % of BD's claim; BD shall be responsible for selecting the securities to be released.

VII. Warranty, Liability

1. In the event of a defect, BD offers a warranty to the Customer under the following conditions:
2. The quality to be provided by BD as well as the quantity of the deliverable are exclusively subject to the specifications in the OA. Public statements by BD or BD's employees or by third parties on the goods to be provided shall not be taken into consideration in the determination of the quality of the service to be performed. BD's employees are not entitled to make guarantee statements, provide information on quality or information on profitability, outside of the OA.
3. BD will exclusively accept a guarantee (Art. 443 of BGB) if such is specified in the OA. In no event will other statements by BD or BD's employees constitute a guarantee.
4. The Customer shall inspect the goods immediately after transfer and shall check each individual delivery in any respect for recognisable and typical lack of conformity. If the Customer finds such lack of conformity, the Customer shall be obligated to directly inform BD of such in writing and as soon as possible.
5. Defects in partial deliveries will not entitle the Customer to reject the entire services.
6. If the Customer attempts to remedy defects themselves, without having granted BD a grace period for rework which expired without performance, BD's warranty will be cancelled.
7. In the event of justified complaints, BD will, at its own discretion, remedy the defect or provide a replacement. If the subsequent performance is unsuccessful, the Customer shall be entitled to deductions in price or to withdrawal.
8. Claims for damages against BD will exist only insofar as the damage was caused by gross negligence or intent. The same shall apply to any claim for the reimbursement of expenses under Art. 284 of BGB. The Customer's rights arising from Articles 283, 311 a of BGB as well as from the Product Liability Act (Produkthaftungsgesetz) as well as claims for damages as defined in Art. 309 no. 7 a of BGB shall remain unaffected thereby. The Customer shall be obligated to inform BD of special risks of damage prior to the conclusion of the contract.
9. In the event of construction services, the warranty period defined in VOB/B (Construction Contract Procedures, Part B) shall apply, in all other cases it shall be 24 months. Art. 479 of BGB shall remain unaffected.
10. The disclaimers and limitations above shall apply also as to the personal liability of bodies, employees, representatives and vicarious agents of BD.
11. BD will not accept any warranty that the goods are suitable for the purpose intended by the Customer and/or are in compliance with the legal provisions applicable in the Customer's country. The Customer shall, at its own expense, be responsible for obtaining any permits and authorisations which are required for use and/or delivery and/or assembly.

VIII. Withdrawal

Without prejudice to any other legal rights, BD shall be entitled to withdraw from the contract without replacement, if the Customer objects to the applicability of these GTC, if an application for the initiation of insolvency proceedings over the Customer's assets is filed, if the Customer fails to comply with material obligations towards BD or a third party, without giving a justified reason, if the Customer made untruthful statements about its creditworthiness, if BD receives information about a material deterioration of the Customer's asset situation after the conclusion of the contract, if BD does not receive correct or timely deliveries itself, without BD's fault, or if BD is, for other reasons, no longer able to comply with its service obligations by using means which are reasonable taking into account its own interests and the justified interests of the Customer recognisable at the time of conclusion of the contract as well as, in particular, in view of the agreed compensation.

IX. Miscellaneous Provisions

1. BD shall be entitled to store and process data about the Customer received as part of the business relationship, in compliance with the Federal Data Protection Act (Bundesdatenschutzgesetz).
2. BD reserves all copyrights, other industrial property rights and rights arising from know-how to all illustrations, drawings, calculations and other documents. Such shall not be disclosed to third parties and shall only be used for their intended purpose.

X. General Bases of Contract

1. Place of performance, payment and fulfilment for all obligations arising from this contract shall be Vechta. That shall apply irrespective of arrangements regarding the bearing of costs or an agreement on Incoterms clauses.
2. The laws of the Federal Republic of Germany shall apply to all rights and claims arising from this contract. The place of jurisdiction shall be Vechta.
3. All – contractual and non-contractual – disputes arising from contracts which are intended to fall under the applicability of these sales conditions shall be submitted to the locally and internationally exclusive jurisdiction of the courts competent for Vechta. Such competency excludes, in particular, any other competency which is legally stipulated based on a personal or factual connection. Moreover, the Customer shall not be entitled to raise any counterclaim, offsetting, third party notices or retention before any other than the court in Vechta which has exclusive jurisdiction. However, BD shall be entitled, in individual cases, to file actions at the Customer's registered office or before other courts competent based on domestic or foreign laws.