
GENERAL TERMS AND CONDITIONS OF BUSCH MICROSYSTEMS CONSULT GMBH

The basis of these general terms and conditions is a recommendation in accordance with § 38 subsection 2 no. 3 of the Act against Restraints of Competition, which the Bundesverband Metall Vereinigung Deutscher Metallhandwerke, Ruhrallee 12, 45138 Essen, has notified to the Federal Cartel Office on 20th July 1994.

§ 1 Validity of the Terms and Conditions

The deliveries, services and offers of Busch Microsystems Consult GmbH shall exclusively be on the basis of the following terms and conditions. Any acknowledgement from the side of the customer referring to his own business or purchase conditions will be hereby expressly rejected.

§ 2 Offers and Conclusions of a Contract

1. All offers enclosed in brochures and advertisements and the prices quoted therein are non-binding and subject to change. Busch Microsystems Consult shall be bound to specially negotiated offers for a period of 60 calendar days.
2. Subsidiary agreements, alterations and amendments shall require the written confirmation of Busch Microsystems Consult GmbH in order to be valid. Such agreements must be concluded in writing.
3. Busch Microsystems Consult GmbH retains the ownership and copyrights to all its construction works. The construction works shall remain Busch Microsystems Consult GmbH's property and shall not be in any way handed over or otherwise allowed to be used by third parties or used for third parties after the implementation of the project, unless explicitly defined otherwise in the commission contracts.
4. Any information included in the offers and/or order acknowledgements of Busch Microsystems Consult GmbH, which is based on an obvious error, i.e. a clerical or calculation error, will not be binding on Busch Microsystems Consult GmbH. On the contrary, the obvious intention will apply.
5. Quotation documents, drawings, descriptions, samples and quotations of Busch Microsystems Consult GmbH cannot without permission be either published, copied or made available to a third party without the approval of Busch Microsystems Consult GmbH. The documents must be returned upon request without any copies being withheld.

§ 3 Prices, Changes of Prices

1. All unit prices are net prices to which the current legal value-added tax that is to be added in each case.
2. Busch Microsystems Consult GmbH company prices are to be understood as being exclusive of packaging and freight costs. In case the customer hasn't listed that the customer will take care of the shipment in its placing of orders, Busch Microsystems Consult GmbH shall take responsibility for the shipment and shall bill it according to the resources consumed in executing them.
3. Should six months lapse between the conclusion of the contract and the agreed and/or actual date of delivery the prices of Busch Microsystems Consult GmbH at the time of the delivery or supply are applicable; if the latter prices exceed agreed upon the first around more than 10%, then the customer is entitled to withdraw from the contract.
4. If the agreed delivery deadlines are postponed by more than four weeks by the customer, Busch Microsystems Consult GmbH shall be entitled to invoice the costs incurred in the framework of order processing at the agreed date of delivery.

§ 4 Delivery and Performance Times

1. The agreement of delivery periods or deadlines that can be agreed on a binding or non-binding basis must be effected in writing in order to be legally valid. The delivery periods and deadlines will only be binding when Busch Microsystems Consult GmbH has made an express declaration to this effect.
2. Busch Microsystems Consult GmbH shall only be responsible for delays and/or for the impossibility of providing his supplies and services if Busch Microsystems Consult GmbH, its legal representatives or vicarious agents have caused the impediment to performance wilfully or with gross negligence. This principle will be applicable, in particular in cases of force majeure, strikes, lockouts, official directives etc., even if the impediments occur at the suppliers of Busch Microsystems Consult GmbH or the supplier's subcontractors. Accordingly, one prerequisite for the delivery period is that Busch Microsystems Consult GmbH itself receives its own supplies in a correct form and in due time. The duration of a period of grace to be granted by the customer according to the statutory provisions in cases of delay of performance is stipulated as two weeks beginning from the time when Busch Microsystems Consult GmbH receives notification of the granting. § 5 Cancellation The cancellation of orders must be in written form. If the cancellation is made up to six weeks before the date of scheduled delivery, a cancellation fee of 70 % of the order value shall be payable. If the cancellation is made up to two weeks before the date of scheduled delivery, a cancellation fee of 85% of the order value shall be payable.

§ 6 Shipping and Transfer of Risk

1. The risk shall transfer to the customer as soon as the shipment is handed over to the carrier and or has left the premises of Busch Microsystems Consult GmbH for delivery. If shipment is delayed at the request of the customer, the risk shall transfer to the customer upon shipment notification.
2. Upon the customer's request deliveries will be insured in his name and on his account.

§ 7 Warranty

1. If the service rendered or the delivered object by Busch Microsystems Consult GmbH is deficient and/or if there is a lack of warranted characteristics and/or if a defect arises within the warranty period as a result of manufacturing or material faults, Busch Microsystems Consult GmbH will, at its option and to the exclusion of other warranty claims on the part of the customer, Busch Microsystems Consult GmbH shall be allowed to supply a replacement or to rectify the defect. Multiple rectifications shall be permitted.
2. The warranty period is 6 months and begins with the date of delivery or acceptance, unless longer mandatory periods are stipulated by law.
3. Claims for obvious defects can no longer be asserted after acceptance. Otherwise, Busch Microsystems must be notified of such defects in writing without delay, at the latest, however, within two weeks of delivery, in order to maintain the customer's warranty claims. The defective objects must be made available for an inspection of Busch Microsystems Consult GmbH in the original condition at the time that the defect was detected.
4. Outwardly recognizable damage to the shipment is to be certified by the deliverer of the shipment immediately at the take over by the customer in written form. On discovery of damage, which is not externally visible, defects must be reported to the forwarding agent in writing no later than 7 days after delivery of the goods.
5. Insignificant, reasonable deviations in the dimensions and designs, in particular in the event of repeat orders, shall not be deemed cause for complaint, unless absolute compliance was expressly stipulated. Technical improvements and necessary technical modifications shall also be deemed compliant with the contract, as long as they do not constitute deterioration in the fitness for use.
6. If Busch Microsystems Consult GmbH's operating or maintenance instructions are not followed, products are modified, parts changed or consumable materials used, all claims for defects shall be null and void unless the customer can substantiate the claim that none of these circumstances contributed to the fault.
7. No liability shall be accepted for normal wear and tear.
8. The above provisions in this paragraph will not be applicable to the sale of objects, which have already been used. These are supplied without any form of guarantee.

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9. If Busch Microsystems Consult GmbH is at the customer's disposal for the exchange of information concerning the use of its products and if that service is going beyond the statutory obligations, Busch Microsystems Consult GmbH shall only be liable according to § 7 in case a special compensation was agreed upon.

§ 8 Limitation of Liability

Those claims for damages which result from the positive breach of an obligation, from culpa in contrahendo or from tortious acts and which are not simultaneously based on the contractor's breach of a principal contractual obligation to perform will be excluded not only against Busch Microsystems Consult GmbH but also against his vicarious agents provided that the damage has not been caused wilfully or by gross negligence. This does not apply to damage claims regarding granted characteristics, which shall secure the customer against the risk of consequential harms caused by a defect.

§ 9 Retention of Title

1. All goods delivered (hereinafter referred to also as 'Reserved Goods') by Busch Microsystems Consult GmbH shall remain in the property of Busch Microsystems Consult GmbH until all the present and future claims of Busch Microsystems Consult GmbH against the customer arising from the business relationship have been satisfied.
2. The customer shall be obliged to notify Busch Microsystems Consult GmbH in writing as soon as reasonably possible about any attachments in respect of the object of purchase and/or the assigned claim or any other claims which third parties may lodge in respect. The customer shall not be entitled to sell, give away, pledge or assign by way of security the objects supplied to him subject to the reservation of title, apart from in the cases specified.
3. If the objects are delivered for a business activity carried on by the customer, they may only be resold within the framework of proper management. In this case, the customer's claims against the purchaser resulting from the sale will have already been assigned to Busch Microsystems Consult GmbH. If the items are resold on credit, the purchaser will be required to retain ownership of the goods sold to his customer. The purchaser transfers all rights and claims from this retention of ownership in respect of such customers to Busch Microsystems Consult GmbH.
4. If the customer machines or processes the reserved objects in any way, he will do this on behalf of Busch Microsystems Consult GmbH free of charge. In the event of any processing, connecting, commingling or mixing of the reserved goods with other goods which do not belong to Busch Microsystems Consult GmbH, Busch Microsystems Consult GmbH is entitled to the co-ownership share of the new product in the ratio of the value of the reserved goods to the rest of the processed goods at the time of the processing, connecting, commingling and mixing. If the customer acquires the sole ownership of a new object, the contractual partners are agreed that the purchaser shall grant Busch Microsystems Consult GmbH co-ownership of the new object in the relation of the factor value to the processed, connected or commingled and mixed reserved goods and stores it for the supplier free of charge. If the reserved objects are resold together with other goods, no matter whether without or after processing, combination, commingling and mixing, the anticipatory assignment agreed in item 3 above will only be applicable to the amount of the factor value of the reserved objects which have been resold together with the other goods.
5. If the reserved objects are installed as fixtures of a piece of real property belonging to a third party by the customer or on his behalf, the customer will have already assigned to Busch Microsystems Consult GmbH any resulting claims for remuneration together with all the ancillary rights, including the granting of a security mortgage, against third parties or against anyone whom it may concern.
6. If reserved objects are installed as fixtures of a piece of real property belonging to the customer, he will have already assigned to Busch Microsystems Consult GmbH, the claims resulting from any sale of the piece of real property or of rights in real property together with all the ancillary rights.
7. If the value of the securities existing for Busch Microsystems Consult GmbH according to the above provisions exceeds - not only temporarily - the value of Busch Microsystems Consult GmbH's claims by more than 20 %

in total, Busch Microsystems Consult GmbH will be obliged, at the customer's request, to correspondingly release securities of its choice.

8. If the customer does not fulfill his obligations vis-à-vis Busch Microsystems Consult GmbH or if he does not fulfill them punctually, or if he affects the reservation of ownership in an impermissible way, then Busch Microsystems Consult GmbH can demand that the goods are surrendered irrespective of the claims that are vested in him to fulfillment of the contract, insofar as a reasonable time limit which was set for the customer to fulfill his obligation. If the customer has fulfilled the contract, Busch Microsystems Consult GmbH shall have a duty to release the items to him.

§ 10 Payment

1. Unless otherwise agreed, the invoices of Busch Microsystems Consult GmbH must be paid within 14 days without deduction. Busch Microsystems Consult GmbH delivers goods with a total value under 500,00 € cash on delivery, plus freight and packing.
2. Busch Microsystems Consult GmbH shall reserve the right to refuse checks or bills of exchange. The acceptance always results only through fulfillment. Any and all discounting and bill charges shall be borne by the customer.
3. If Busch Microsystems Consult GmbH learns of circumstances which cast doubt on the customer's creditworthiness, especially if a check issued by the customer cannot be honored or the customer ceases to make payments, Busch Microsystems Consult GmbH shall be entitled to declare that the whole of the outstanding debt is immediately payable, even if Busch Microsystems Consult GmbH has previously accepted checks. In this case, Busch Microsystems Consult GmbH is also entitled to demand advance payments or the provision of security.
4. If the customer should finally and absolutely cease payments and/or if proceedings in bankruptcy or court supervised or out-of-court composition proceedings are applied for against him, Busch Microsystems Consult GmbH shall be entitled to repudiate the contract in respect of that part which yet not has been fulfilled.
5. Busch Microsystems Consult GmbH shall be entitled, irrespective of any contrary terms and conditions of the customer, to assign any payments first of all to any older debts of the purchaser. Busch Microsystems Consult GmbH shall inform the purchaser of the assignment of the payment. If costs and interest have already occurred, Busch Microsystems Consult GmbH shall be entitled to first credit the payment to the costs, then to the interest, then to the principal service.
6. If the customer gets into arrears, Busch Microsystems Consult GmbH shall be entitled to invoice default interest amounting to 1 % above the discount rate of the Deutsche Bundesbank applicable in each case as from the date concerned. This shall not prejudice the right of Busch Microsystems Consult GmbH to claim damages exceeding the amount of the penalty. The customer's right to prove lesser damage - which would then be decisive - will remain unaffected in the cases described above. The first reminder shall be generated after 14 days, followed by the second reminder 7 days later. With the second reminder additional administrative charges of 100,00 € shall be collected.
7. Offsetting on the part of the customer will be excluded provided that it is not a question of counterclaims which are legally valid and established or which are not contested by Busch Microsystems Consult GmbH.

§ 11 Applicable Law, Jurisdiction and Partial Invalidity

1. Solely the laws of the Federal Republic of Germany shall apply for these Terms and Conditions and all legal relationships between Busch Microsystems Consult GmbH and the customer.
2. The sole legal venue for all disputes arising directly or indirectly from the contractual relationship shall be Bad Kreuznach.
3. If a provision of these General Conditions is or becomes invalid, the validity of the remaining provisions or agreements between Busch Microsystems Consult GmbH and the customer will not be affected hereby.