

General Terms and Conditions



1. General terms, scope

1.1. Our offers, deliveries and other services - including future ones - for the persons named in Item shall take place exclusively on the basis of the present general conditions of sale and delivery. Any conflicting terms and conditions of the client or those different terms and conditions of said client not included in our General conditions of sale and delivery shall not be acknowledged by us.

1.2. Our general conditions of sale and delivery are solely valid regarding persons that act in performance of their commercial or independent professional activity in the conclusion of the contract ("Contractor") as well as regarding legal persons subject to public law or a special property subject to public law. They shall not be valid regarding natural persons that conclude the contract for a purpose that cannot be ascribed either to their commercial or independent professional activity ("Consumer")

2. Contents and conclusion of the contract

2.1. The specifications and information included in the product catalogs, brochures and price list shall only become legally binding components of the contract that they are they are expressly referred in said contract.

2.2. The client shall be bound to its order for two weeks. Orders shall become legally binding by our written confirmation. The client shall examine the correctness of the order confirmation and the delivery deadline specified therein. In the event that the order confirmation differs from the original order and the client does not object to this in writing within three workdays from receipt of the order confirmation, we shall consider these deviations as approved.

3. Description of merchandise, models, samples, subject of change

3.1. Description of merchandise in catalogs, brochures etc. shall not represent any guarantee regarding properties.

3.2. Regarding models, samples, drawings, estimates and other documents, we reserve all property rights, copyrights and commercial trademark rights (including the right to report these rights); the documents specified shall be treated confidentially and they may only be disclosed to third parties in the event that a confidentiality requirement is recognizable absent. They shall be immediately returned to us upon demand in the event that our offer is not accepted.

3.3. We reserve the right to changes regarding design and materials as long as the regular or contractually stipulated use of the delivered object is not significantly or detrimentally compromised and the modification can be expected of the client. Differences in structure and color reasonable for the client shall be expressly reserved as long as they remain within the nature of the materials applied (solid wood, veneers, leather, textiles, inter alia) and they are customary in the trade.

4. Prices, Delivery conditions, Price modifications

4.1. The prices shall include - unless otherwise agreed - packing, transportation, insurance and other shipping costs but exclude sales tax in the prevailing amount specified by law. Unless other agreement has been made, our deliveries shall take place pursuant to DDP clause (delivered duty paid) that shall be construed pursuant to Incoterms 2020.

4.2. In the case of contracts with an agreed delivery terms of more than three months, both contractual partners may require a modification of the price agreed to the extent that cost reductions or increases not avoid- able by the contractual partners occurred after conclusion of the contract, especially, due to tariff agreements or modifications of material prices.

5. Payment terms

5.1. Unless other agreement is made, our invoices shall be due and payable without deduction eight days after the day of the invoice. For all orders, a payment in the amount of 1/3 of the order value shall be due upon contract conclusion. The payment shall only be deemed as completed when the amount is at our disposal without regress (payment receipt).

5.2. A set-off, or a withholding of payment with the legal effect of a set-off is only allowed in the case of legal claims of the client that have been acknowledged and not disputed by us, which are ready for decision or established as binding.

6. Delivery method, partial deliveries

6.1. As long as no special agreements are made regarding the delivery method, we may specify the appropriate delivery method at our discretion.

6.2. Partial deliveries and performances are allowed in a reasonable extent.

7. Delivery deadline, reservation of self-delivery, default of acceptance, delivery

7.1. We shall agree on delivery times according to calendar weeks. Delivery deadlines shall only be binding if they are expressly confirmed by us in writing.

7.2. Agreed delivery deadlines shall commence upon conclusion of the contract but not before submission of the documents, approvals, consent to be delivered by the client and after complete clarification of possible product-related questions to be replied by the client and that of specific information regarding the desired implementation to be specified by the client, especially the desired equipment of the delivered merchandise. In the event that pursuant to Item 5.1, the Client must perform an advance payment, the delivery deadline period shall commence on the day on which the advance payment is at our disposal without regress (payment receipt).

7.3. The delivery deadline is complied with if prior to its expiry, the conditions giving rise to transfer of risks have occurred. In the event that we end up in a delay due to a simple negligence with delivery or service, our responsibility for compensation of damages due to delay in delivery or services which can be claimed apart from the delivery/service shall be limited to 0.75% of the value of the delivery/services for each completed week of delay but not to exceed a maximum value of 5% of the value of delivery/service. If in the cases named above, the client upholds compensation for damages instead of the delivery or service, respectively, said claim to compensation for damages shall be limited to 15% of the value of the delivery/service. The limitation of liability pursuant to the foregoing sentences no. 2 and 3. shall not be valid upon a delay due to a gross negligence, nor upon any harm to human life, bodily health or general health or in the case of a fixed business transaction, i. e. a transaction where the success or failure depends on compliance with a fixed period of delivery.

7.4. The delivery period shall be prolonged - even within a delay - to an adequate manner in the case of force majeure and all previously unexpected obstacles occurring after conclusion of the contract for which we are not responsible, as long as these obstacles have a certifiable influence on the delivery of the defaulted service. This shall also be valid if such conditions occur at the subcontractor.

We shall communicate the beginning and end of such obstacles to the client as soon as possible. If the obstacle persists for more than three months or it is established that it shall persist longer than three months, both the client and us may withdraw from the contract.

7.5. Irrespective of Item 7.4, the correct and timely self-delivery shall always be reserved.

7.6. In the event that the client ends up in a delay with acceptance of the delivered object or payment, we may withdraw from the contract after unsuccessful expiry of a supplemental deadline required by law and specified by us and/or require compensation for damages instead of the services. Upon upholding our demands for compensation of damages instead of the services, we may require a compensation without verification in the amount of 25% of the purchase price as coverage for unrealized profits as long as serial or standard products are involved in the merchandise, or in the amount of 100 % of the purchase price as long as individual custom production is involved in the merchandise according to specific wishes of the client and relevant expenditures occurred on our behalf for ensuring readiness for delivery.

The contractual partners shall be at liberty to certify a higher or a substantially lower actual damage amount. Moreover, the lawful rules regarding determination of the damage compensation shall also be unaffected as long as the contract has been completely satisfied on our behalf. Moreover, we shall be entitled in the event of delayed acceptance by the client to invoice to said client the incidental expenses, especially storage costs.

7.7. The Customer shall make arrangements for an acceptable delivery and assembly (e.g. free access, free transport routes, secured access for lorries, free of craftsman's work, adequate heating, dry rooms, possibility to use a lift in buildings with two or more floors, possibility to utilize electricity and lighting as well as availability of a room that can be locked). If one of the prerequisites necessary for delivery and assembly for which the Customer is responsible is not fulfilled, we shall charge any additional expenses incurred.

8. Notice of defects, warranty, expiry

8.1. If the purchase for both parties is a commercial business transaction, the client shall - as long as this is doable according to a regular course of business - immediately inspect the delivered product - i. e. especially prior to installation and/or further processing and shall report in writing all kinds of defects by specifying the type and extent of said defect. In the case of open defects, the complaint shall be sent to us within eight working days after delivery, in the case of hidden defects, it shall be sent within eight working days after its detection. In the event that the complaint does not satisfy the requirements named above, the merchandise shall be regarded as accepted.

8.2. Rights pertaining to material defects may only occur if the merchandise shows a material defect upon transfer of the risk. In this case, as supplementary performance of the contract, the client may require according to our selection either the elimination of the defect (remediation) or the delivery of a product free of defect (supplementary delivery). The client shall bear the expenditures required for the purpose of supplementary performance in the event that they are increased by the fact that the delivered object is passed over to a different location than the business site of the client, unless such event corresponds to its proper use according to its purpose.

8.3. The lapsing period for material defect claims shall amount to five years in the case of a building and in the case of a product the success of which consists of planning and supervisory services. In other cases, the term of expiry for material damage claims - subject to sentence no. 3 - shall be one year. In the event of an injury to life, body or health for which we are responsibly as well as in the events of deliberate act and gross negligence, the term of expiry for material defect claims in the case of sentence no. 2. shall be two years.

8.4. For damages due to defects of the merchandise, we shall be only liable up to the limits set forth in Item 9.

9. Limitation of liability

9.1. We shall be liable according to the provisions of the product liability act as well as in the cases of incapacity and unenforceability for which we are responsible. Moreover, we shall be responsible for damages according to provisions of relevant law in the cause of wilful intention, gross negligence, upon assumption of a guarantee or in the case of an injury to life, body or health for which we are responsible. In the event that we otherwise violate a responsibility by simple negligence the satisfaction of which makes possible the proper implementation of the contract in the first place and the client can regularly trust the satisfaction of said responsibility, or an obligation by the infringement of which the objective of the contract cannot be achieved, our obligation of compensation is limited to foreseeable damages typical of contracts. In all other cases of liability, damage compensation claims due to violation of a contractual obligation as well as due to an illegitimate action shall be excluded as long as we are not liable for unrealized profits or other material damages of the client.

9.2. As long as our liability on the basis of the foregoing provisions is excluded or limited, this shall also be valid for the personal responsibility or our employees, workers, co-workers, representatives and auxiliary workers.

10. Reservation of title

10.1. We shall reserve up to complete satisfaction of demands (even future ones, including all auxiliary demands such as financing costs interests) arising from our business connection with the client the ownership title to the merchandise delivered. The client shall be required to handle the merchandise subject to such reservation with care and to notify us in the event of pledging, confiscation, damage or loss immediately. Violation of this responsibility shall entitle us to withdraw from the contract.

10.2. The Client may alienate the merchandise during the usual and regular course of business but it may not give said merchandise as a pledge or as a security. The client shall assign to us even at this point the purchase price claims arising from the resale of the goods subject to retention of title (including the acknowledged balance from a current account agreement or in the event of an insolvency of the business partner of the client the actually available "causal balance") in the amount of the invoiced value of the goods subject to retention of the title and we hereby accept such assignment. We give a revocable authorization to the client to collect for us the demands assigned to us in its own name. This authorization for collection may only be revoked if the client does not properly fulfill its payment obligations. Upon our demand, in such a case, the client shall make the specifications required for collection about the demands assigned, as well as submit the relevant document and notify the debtor regarding said assignment.

10.3. In the case of payment delay of the client regarding a substantial portion of its liabilities, we

shall be entitled to a temporary repossession of the merchandise subject to retention of title at the expense of the client. Exercising the right to repossession shall not represent a withdrawal from the contract, unless we have specifically declared such an event.

10.4. In the event that the realizable value of the securities provided to us according to the foregoing provisions exceeds our demands against the client not only temporarily and by more than 10%, we shall release securities at our own discretion upon demands of the client in this respect.

11. Disposal of electrical and electronic equipment

11.1 Companies agree to implement WEEE Alternative Financing Arrangement, thereby ensuring that the WEEE is collected, treated, and managed in accordance with the WEEE regulations.

12. Data Protection

12.1. We shall use the data (title, name, address, email address, telephone number, fax number, bank details) supplied by a Customer in accordance with the statutory provisions, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

12.2 For the purpose of fulfilling the contractile obligations e.g. in relation to the delivery and settlement the personal data will be forwarded to the carrier or the accounts department in so far as required. Once the contract is fulfilled and the complete payment settlement and complete payment, including payments of all agreed fees, all data that do not have to be stored for legal reasons shall be erased and no longer made available for any other purpose. The Customer shall be entitled at any time by contacting the e-mail address privacy@bene.com to request that its data be amended, blocked or erased. Beyond this, none of the personal data provided to the Company shall be made accessible to third parties without the separate written consent of the Customer. Unless this is required by law.

12.3 In case the Customer agrees to the use of its data, we ensure that any sub-processors engaged by the Company are subject to the same obligations as Bene and that we remain directly liable to the Customer for the performance of a sub-processor's data protection obligation.

12.4. The Customer gives his consent that their personal details may be used for the sending of information about new products and services via email. The Customer furthermore consents that their personal data may be used for purposes of market research. A dissemination of these data as well as survey results to third parties will not take place. The Customer expressly declares in this context to agree to be contacted via email by us (or by data protection service providers commissioned by us). The customer shall at all times have the right to object to such use. The objection shall be sent to BENE GmbH, Schwarzwiesenstrasse 3, 3340 Waidhofen/Ybbs Austria or via email to privacy@bene.com.

13. Applicable law, jurisdiction

13.1. These General Conditions of Sale and Delivery and the complete legal relationship between us and the client shall be governed by the law of the Federal Republic of Germany under exclusion of the UN CISG.

13.2. As long as the client is a trader in the meaning of the commercial code, a legal person subject to public law or a special property subject to public law, the jurisdiction shall be our place of business. Nevertheless, we shall also be entitled to submit a claim against the client at its general legal jurisdiction.

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