



General Terms and Conditions of Sale and Delivery

BarthHaas GmbH & Co. KG

§ 1 General Information

These General Terms and Conditions of Sale and Delivery apply to the cooperation with BarthHaas GmbH & Co. KG – hereinafter also "BH" - they shall in particular also apply to future contracts, amendments to contracts and deliveries, until they are published in a new version and as far as not otherwise agreed. The Buyer shall express its agreement with these Terms and Conditions through the acceptance of the delivery at the latest.

General Business Terms and Conditions of the contractual partner shall not be deemed binding for us even if we do not explicitly object hereto once again after the contractual partner has referred to its Terms and Conditions or after we have received such Terms and Conditions.

§ 2 Offers

All of our offers shall be deemed without obligation unless a binding period is stated by us.

In case of offers without a binding period the order/acceptance of our offer without obligation shall be deemed as a legally binding offer. We may accept this offer at our choice within four weeks (order confirmation).

Orders and call-off orders for goods should be placed in writing for purposes of documentation. It is sufficient to send an order by signed fax or by email, also without a personal signature.

§ 3 Prices

Our prices are deemed in Euro, ex our warehouse, respectively plus value added tax in the respectively applicable statutory amount.

In case of contracts, with which (partial) deliveries later than 3 months after conclusion of the contract are envisaged, we reserve the right to adjust the prices for these (partial) deliveries in line with the occurred changes in costs after conclusion of the contract, in particular owing to freight costs, insurances, taxes and/or customs fees. The possibility of a price adjustment shall not apply to price increases with the goods themselves.

In cases, in which the goods are transported by the contractual partner or a transport person commissioned thereby, the following shall apply: If the delivery is made to a location within the European Union, we are entitled to request the respective confirmation of arrival from the contractual partner. If the delivery is made to a location outside of the European Union, we are entitled to request the proof of export that is respectively required under customs law and/or value added tax law from the contractual partner, which proves that the goods were taken to a third country. If the customer does not satisfy our request to submit these documents within one month we shall, if applicable, be entitled to subsequently charge the statutory German value added tax to be borne by BH as well as the European customs duties for the goods.

§ 4 Payment and Offsetting

The purchase price is due and payable immediately net (without deductions and discounts). Payments have to be made into one of our accounts. Costs of the payment transactions will be borne by the contractual partner.

The contractual partner shall be deemed in default at the latest 30 days after the due date and receipt of the invoice, unless there is a case of Section 286 Para. 4 German Civil Code [*Bürgerliches Gesetzbuch - BGB*]. In case of default, we are entitled to demand default interest in the amount of nine percentage points above the base lending rate of the European Central Bank p.a. If we can prove higher damages due to default, we are entitled to assert these damages.

If partial deliveries are not paid in full, we shall be entitled to withhold further deliveries until the full settlement.

The contractual partner may only offset against claims which have been declared final and binding or are undisputed. Rights of retention can also only be asserted by the contractual partner to this extent.

Without our prior written consent, the contractual partner is forbidden from assigning any claims against us to third parties.

§ 5 Delivery

The contractual partner has to pick the goods up ex warehouse from our company (obligation to collect delivery from the supplier). If a deviation from this provision is agreed in an individual contract by naming a delivery code (e.g. FOB, CIP etc.), the Incoterms in their respective currently valid version shall apply in this case.

Delivery deadlines and delivery dates shall be deemed as adhered to if the object of delivery leaves our plant/warehouse upon expiration of said

deadlines and dates. Delivery deadlines shall principally begin on the date of our order confirmation. Delivery deadlines shall however in no way begin before the contractual partner has not, on its part, fulfilled all necessary obligations to provide assistance, has in particular notified us of delivery addresses and delivery times. The adherence to delivery dates also depends on the fulfillment of the necessary obligations of the contractual partner to provide assistance.

In case of contracts, with which a call-off order of goods was agreed by the contractual partner, delivery dates and delivery deadlines will only become binding for the called goods by our return confirmation.

If no delivery date is determined in the contract or in the call-off order of the goods, the goods are to be taken over/accepted by July 31 of the year following the respective harvest year at the latest. After July 31 the Buyer shall be deemed in default of acceptance, without this requiring a further request for purchase. After July 31 BarthHaas is entitled to invoice the goods against advanced payment.

From July 1 of the year following the respective harvest year BarthHaas is entitled to charge storage fees for paid goods in the amount of EUR 12 per pallet and month.

Deliveries will only be carried out by the pallet. This is particularly to be taken into consideration with contracts with a call-off order of goods by the contractual partner.

Within the agreed delivery deadlines, we are entitled to make partial deliveries within an agreed contractual quantity or with deliveries from multi-year contracts, insofar as this does not lead to any unreasonable disadvantages for the contractual partner.

§ 6 Warranty, Liability Due to Defects and General Liability

A slight deviation in quantity that is possible in individual cases of up to five per cent of the net weight of the contractual quantity or partial delivery quantity shall not be deemed a material defect.

Slight defects in case of partial deliveries shall not release the contractual partner from the obligation to take over/accept the respective residual quantities of the goods as per contract.

The warranty rights of the Buyer shall presume that it has properly satisfied its responsibilities for inspection and to report defects according to Section 377 German Commercial Code [*Handelsgesetzbuch - HGB*] or Art. 38 et seq. CISG (United Nations Convention on Contracts for the International Sale of Goods). Obvious material defects to the goods (also those, which are recognizable as a result of a proper inspection) are to be reported within five days after delivery at the destination. Hidden material defects are to be reported within five days from discovery by the contractual partner, but at the latest before expiration of agreed or legal statutes of limitation and exclusion deadlines. The complaint must be made in writing. It is sufficient to send the complaint by fax or by email, also without a personal signature.

In case of a justified report of defects within the deadline we can, at our choice, remedy the defect or deliver fault-free goods (subsequent performance). The contractual partner is furthermore entitled to the statutory rights to reduction and rescission.

Further claims of the contractual partner, in particular owing to defects to the goods— no matter for what legal grounds (contractual and statutory claims as well as liability claims owing to fault with contractual negotiations) — are excluded. We shall in particular not be liable for damages to other objects of the contractual partner, which are caused by the delivered goods or our employees, and for missed profits or other financial losses of the contractual partner. The limitation to liability shall also apply to a possible personal liability of our employees, workers and vicarious agents.

The aforementioned exemption from liability shall not apply if the damages were caused due to willful intent or gross negligence. The aforementioned exemption from liability shall furthermore not apply if an essential contractual obligation (cardinal obligation) was breached by simple negligent conduct. Except in the event of liability for willful conduct this is limited to the foreseeable, typically occurring damages.

The liability for a culpable injury to life, the body or the health, the liability pursuant to product liability regulations, the liability owing to maliciously non-disclosed defects as well as the statutory burden-of-proof rules shall remain unaffected.



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The Seller shall not be responsible for losses in quality of the sold goods due to improper storage at the contractual partner or its buyers.

§ 7 Interferences to Delivery and Liability

Events of force majeure shall entitle us to postpone the delivery by the duration of the impediment and a reasonable start-up time. This shall also apply if such events occur during an existing default. Currency, trade policy or other sovereign measures, in particular with regard to the production and distribution of the goods, strikes, lock-outs, interferences to business operation that were not caused by us and were not foreseeable (fire, energy shortage), impediment to the traffic routes as well as all other circumstances shall be deemed equivalent to force majeure, which render the delivery of the goods substantially more difficult, unreasonable or impossible for us, without having been caused by us. The statutory rights of the contractual partner to release itself from the contract in such cases, shall remain unaffected.

Should we be obliged by law towards the contractual partner to compensation for a damage due to default we limit our liability to a maximum of 10% of the net purchase price of the late delivery of goods. Flat rate claims, processing fees of the contractual partner or similar costs, which do not correspond with any actually occurred damage, will not be assumed by us. Statutory rights of rescission of the contractual partner shall remain unaffected.

Our liability with a final non-fulfillment of our delivery obligations (non-performance) shall be limited, except in the event of liability for willful conduct, to the foreseeable, typically occurring damages.

If the delivery or acceptance of the goods is delayed for reasons, for which the contractual partner is responsible, we shall invoice damages due to delay and additional expenses (in particular storage costs) pursuant to the statutory regulations. We reserve the right to assert further claims for damages in the event that the contractual partner fails to attend to its duties to take over/accept goods (§ 10).

§ 8 Statute of Limitations

The statute of limitations for warranty claims, in particular for claims for damages due to defects and claims for reimbursement of fruitless expenses, is one year from delivery. This shall not apply to warranty claims owing to maliciously non-disclosed defects. The statute of limitations for all other claims of the contractual partner is one year. The start of the statute of limitations shall be oriented to the statutory regulations here.

In case of claims from willful or grossly negligent conduct, claims from the breach of essential contractual obligations (cardinal obligations), claims from a culpable injury to life, the body or the health as well as claims pursuant to product liability regulations the legal statutes of limitation regulations shall apply.

§ 9 Reservation of Title

We reserve the property to the sold goods (reserved goods) until the satisfaction of all, also future and conditional, claims from the business relationship with the contractual partner. The reservation of title shall finally lapse with the settlement of all claims outstanding at the time of the payment and that are covered by this reservation. Insofar as the validity of the reservation of title in the country of destination is bound to special prerequisites/form regulations, the contractual partner has to ensure that these are fulfilled. In case of conduct of the contractual partner in breach of the contract, in particular with default of payment, we are entitled to take the reserved goods back, after we have set a reasonable deadline for the payment.

The contractual partner hereby now already grants the permission for access to its premises by BH or by third parties commissioned by BH, for the purpose of asserting the reservation of title regulated in the aforementioned clause.

The contractual partner may neither pledge, nor assign the sold goods as collateral before transfer of ownership. In case of attachments as well as confiscation or other disposals by third parties the contractual partner has to point out our property to the reserved goods and to notify us in writing without delay.

In the event of a resale of the sold goods in the ordinary course of business by the contractual partner it (the contractual partner) hereby now already assigns its claims established from the resale to us in the amount of the invoice value of the reserved goods together with all securities. We hereby accept the assignment. The assigned claims serve to the same extent for security as the reserved goods.

We undertake to release the securities to which we are entitled, at the request of the contractual partner, to the extent that their realizable value, not only temporarily, exceeds our still outstanding (residual) claims by more than 10%. We can choose the securities that are to be released at our free discretion.

§ 10 Failure to Accept/Take over the Goods; Right of Rescission in Case of Insolvency

If the contractual partner refuses to accept the goods, despite maturity, and if it does not accept these despite a written demand for acceptance and the setting of a reasonable deadline within the set deadline, we are entitled to rescind the contract and to assert damages.

In these cases, we can, with the non-acceptance of the goods, without further proof, assert 20% of the net sales price of the non-accepted goods as flat-rate damages. The right of the contractual partner to prove no or lower damages, shall remain unaffected hereby; as well as our right to prove further, higher damages.

The assertion of damages due to delay and additional expenses owing to delays in the acceptance shall remain unaffected (§ 7).

The opening of insolvency proceedings or corresponding comparable bankruptcy proceedings against the contractual partner shall entitle us to immediate rescission of the ongoing contracts with regard to deliveries/partial deliveries, which were not yet paid in full by the contractual partner.

§ 11 Place of Performance, Place of Jurisdiction, Applicable Law

The headquarters of our company is agreed as place of performance for our obligations towards the contractual partner and as place of delivery of the goods. The headquarters of our company is agreed as place of performance for the obligations of the contractual partner towards us, in particular obligations for payments and compensation of damages.

The exclusive place of jurisdiction for disputes from, owing to or in connection with all – also future – contracts with the contractual partner and/or regarding their validity is the headquarters of our company. We are additionally entitled to file legal action at each place of jurisdiction ensuing from the law.

Substantive law of the Federal Republic of Germany with the inclusion of the Vienna UN Convention on Contracts for the International Sale of Goods of April 11, 1980 is applicable to all legal relationships between us and the contractual partner.

§ 12 Translations in Other Languages

If we make translations of these General Terms and Conditions of Delivery in other languages available to the contractual partner and if disputes arise with the interpretation compared to the German text, the German version shall be binding.

§ 13 Final Provisions

Should one of these provisions be or become invalid, this shall have no effect on the validity of the other provisions. In case of invalidity of individual regulations and/or loopholes in the contract the statutory provisions shall apply, which shall as far as possible correspond with the commercial purpose of the regulation by taking the interests of the contractual parties into consideration.

Customer data of the contractual partner will be stored within the scope of the reciprocal business relationship by complying with the statutory regulations. Our business partners undertake not to forward the data arising within the scope of the business relationship to unauthorized third parties, and to secure these against access and misuse by unauthorized persons.