

GENERAL TERMS AND CONDITIONS OF BUSCH MICROSYSTEMS GMBH

§ 1 Validity of the Terms and Conditions

1. The deliveries, services and offers of Busch Microsystems GmbH shall exclusively be based on 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. Terms and conditions of the customer or third parties shall not apply, even if Busch Microsystems GmbH does not separately object to their validity in individual cases. Even if Busch Microsystems GmbH refers to a letter that contains or refers to the terms and conditions of the customer or a third party, this shall not constitute an agreement to the validity of those terms and conditions.
2. Individual clauses of these Terms and Conditions of Business shall not apply only to the extent that deviating agreements are made in individual contracts. The remaining clauses remain valid.

§ 2 Offers and Conclusions of a Contract, Brochures and Copyright

1. All offers enclosed in brochures and advertisements and the prices quoted therein are non-binding and subject to change. Busch Microsystems GmbH shall be bound to specially negotiated offers for a period of 60 calendar days.
2. The legal relationship between Busch Microsystems GmbH and the customer shall be governed solely by the written agreement of sale, including these General Terms and Conditions. This contract fully reflects all agreements between the parties to the contract on the subject matter of the contract. Oral assurances given by Busch Microsystems GmbH prior to the conclusion of this contract are not legally binding and oral agreements between the parties to the contract shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to apply with binding effect.
3. Busch Microsystems GmbH retains the ownership and copyrights to all its plans, drawings, descriptions, samples, construction works etc. The construction works shall remain Busch Microsystems 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 GmbH, which is based on an obvious error, i.e. a clerical or calculation error, will not be binding on Busch Microsystems GmbH. On the contrary, the obvious intention will apply.
5. Quotation documents, plans, drawings, descriptions, samples, construction works, quotations etc. of Busch Microsystems GmbH cannot without permission be either published, copied or made available to a third party without the approval of Busch Microsystems GmbH. The documents must be returned upon request without any copies being withheld.

§ 3 Prices

1. Busch Microsystems GmbH company prices are to be understood in EUR ex works plus packaging, the statutory value added tax, customs duties for export deliveries as well as fees and other public charges. In case the customer hasn't listed that the customer will take care of the shipment in its placing of orders, Busch Microsystems GmbH shall take responsibility for the shipment at the customer's expense and shall bill it according to the resources consumed in executing them.
2. If the agreed delivery deadlines are postponed by more than four weeks by the customer, Busch Microsystems 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. Any deadlines for the dispatch of the goods stated by us are always only approximate and may therefore be exceeded by up to five working days.
2. Busch Microsystems GmbH shall only be responsible for delays and/or for the impossibility of providing his supplies and services if Busch Microsystems 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, pandemics, official directives etc., even if the impediments occur at the suppliers of Busch Microsystems GmbH or the supplier's subcontractors. Accordingly, one prerequisite for the delivery period is that Busch Microsystems 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 GmbH receives notification of the granting.

§ 5 Cancellation

1. 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 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, Limitations Period

1. The basis of Busch Microsystems GmbH's liability for defects is primarily the agreement made on the quality of the goods. All product descriptions and manufacturer information that are the subject of the individual contract or that were made public by us (in particular in catalogues or on our Internet homepage) at the time of conclusion of the contract shall be deemed to be an agreement on the quality of the goods.
2. If the quality was not agreed upon, it is to be judged according to the legal regulation whether a defect is present or not (§ 434 para. 1 p. 2 and 3 of the German Civil Code (BGB)). However, Busch Microsystems GmbH shall not be liable for public statements made by the manufacturer or other third parties (e.g. advertising statements) which the purchaser has not indicated to Busch Microsystems GmbH as being decisive for the purchase. All product descriptions and manufacturer's specifications which are the subject of the individual contract, or which were made public by Busch Microsystems GmbH (in particular in catalogues or on our Internet homepage) at the time of conclusion of the contract shall be deemed to be an agreement on quality in this sense. If the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (§ 434 para. 3 of the German Civil Code). Public statements made by the manufacturer or on its behalf, in particular in advertising or on the labelling of the goods, take precedence over statements made by other third parties. In the case of goods with digital elements or other digital content, Busch Microsystems GmbH shall only be obliged to provide and, where applicable, update the digital content if this is expressly stated in an agreement of quality as set out above. Busch Microsystems GmbH accepts no liability in this respect for public statements made by the manufacturer or other third parties.

3. Busch Microsystems GmbH shall generally not be liable for defects that the buyer was aware of at the time of conclusion of the contract or was not aware of due to gross negligence (§ 442 of the German Civil Code). The delivered items shall be carefully examined immediately after delivery to the customer or to the third party designated by the customer. With regard to obvious defects or other defects that would have been recognisable in an immediate, careful inspection, they shall be deemed to have been approved by the customer if Busch Microsystems GmbH does not receive a written notification of defects within seven working days of delivery. With regard to other defects, the delivered goods shall be deemed approved by the customer if Busch Microsystems GmbH does not receive the notification of defects within seven working days after the time at which the defect became apparent; however, if the defect was already apparent at an earlier time during normal use, this earlier time shall be decisive for the start of the notification period. At the request of Busch Microsystems GmbH, a delivery item which is the subject of a complaint shall be returned to Busch Microsystems GmbH free of charge. If the complaint is justified, Busch Microsystems GmbH shall reimburse the costs of the cheapest shipping route; this shall not apply if the costs increase because the delivery item is located at a place other than the place of intended use. If the purchaser fails to carry out a proper inspection and/or report defects, any liability of Busch Microsystems GmbH for the defect not reported or not reported in good time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for assembly, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of a breach of one of these obligations; in this case, in particular, the purchaser shall have no claims for reimbursement of corresponding costs ("removal and installation costs").
4. If the service rendered or the delivered object by Busch Microsystems 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 GmbH shall, at its option and to the exclusion of other warranty claims on the part of the customer, be allowed to supply a replacement or to rectify the defect within a timely manner. Multiple rectifications shall be permitted.
5. Notwithstanding § 438 (1) No. 3 the German Civil Code, the general limitation period for claims arising from material defects and defects of title is one year from delivery. Insofar as formal approval has been agreed, the limitation period shall commence with the approval. The aforementioned limitation periods of the law of sale shall also apply to contractual and non-contractual claims for damages of the Buyer which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 the German Civil Code) would lead to a shorter limitation period in individual cases. Claims for damages of the customer according to § 8 para. 2 sentence 1 and sentence 2(a) as well as according to the German Product Liability Act shall become statute-barred exclusively according to the statutory limitation periods. Further special statutory provisions on limitation periods (in particular § 438 para. 1 no. 1, 76 para. 3, §§ 444, 445b of the German Civil Code) shall also remain unaffected.
6. Technical improvements and necessary technical modifications shall be deemed compliant with the contract, as long as they do not constitute deterioration in the fitness for use.
7. If Busch Microsystems 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.
8. The warranty shall not apply if the customer modifies the delivery item or has it modified by third parties without the consent of Busch Microsystems GmbH and the remedy of the defect is thereby rendered impossible or unreasonably difficult. In any case, the customer shall bear the additional costs of remedying the defect arising from the modification.
9. No liability shall be accepted for normal wear and tear.
10. 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. The liability for damages due to injury to health, body or life and grossly negligent and/or intentional violation of my obligations as a seller remains unaffected.

11. If Busch Microsystems 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 GmbH shall only be liable according to § 7 in case a special compensation was agreed upon.
12. Claims of the customer for reimbursement of expenses pursuant to § 445a para. 1 of the German Civil Code are excluded, unless the last contract in the supply chain is a consumer goods purchase (§§ 478, 474 of the German Civil Code) or a consumer contract for the provision of digital products (§§ 445c sentence 2, 327 para. 5, 327u of the German Civil Code). Claims of the customer for damages or compensation for futile expenses (§ 284 of the German Civil Code) shall only exist in accordance with the following § 8, even if the goods are defective. If a reasonable deadline to be set by the customer for subsequent fulfilment has expired without success or is dispensable in accordance with the statutory provisions, the customer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of withdrawal.

§ 8 Limitation of Liability

1. Busch Microsystems GmbH is liable for damages - regardless of the legal basis - within the scope of strict liability only in the case of intent and gross negligence, provided it is not a violation of essential contractual obligations. Essential contractual obligations include the obligation to deliver on time, its freedom from defects of title and such material defects as impair its functionality or usability more than insignificantly, as well as protection and care obligations which are intended to enable the customer to use the delivery item in accordance with the contract or which are intended to protect the life or limb of the customer's personnel or to protect the customer's property from substantial damage. The aforementioned limitation of liability shall also apply to breaches of duty by or in favour of persons whose fault Busch Microsystems GmbH is responsible for according to statutory provisions.
2. If Busch Microsystems GmbH is liable for damages on the merits, this liability shall be limited to damages that Busch Microsystems GmbH foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which it should have foreseen if it had exercised due care. Indirect damage and consequential damage resulting from defects in the delivery item shall only be eligible for compensation if such damage can typically be expected when the delivery item is used for its intended purpose.
3. The limitations of this § 8 shall not apply to the liability of Busch Microsystems GmbH for intentional conduct, for guaranteed characteristics, for injury to life, body or health or under the German Product Liability Act.

§ 9 Retention of Title

1. All goods delivered (hereinafter referred to also as 'Reserved Goods') by Busch Microsystems GmbH shall remain in the property of Busch Microsystems GmbH until all the present and future claims of Busch Microsystems GmbH against the customer arising from the business relationship have been satisfied.
2. The customer shall be obliged to notify Busch Microsystems 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 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 GmbH.

4. If the customer machines or processes the reserved objects in any way, he will do this on behalf of Busch Microsystems 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 GmbH, Busch Microsystems 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 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 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 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 GmbH according to the above provisions exceeds - not only temporarily - the value of Busch Microsystems GmbH's claims by more than 20 % in total, Busch Microsystems 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 GmbH or if he does not fulfill them punctually, or if he affects the reservation of ownership in an impermissible way, then Busch Microsystems 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 GmbH shall have a duty to release the items to him.
9. It is not necessary to withdraw from the contract in order to assert the rights arising from retention of title, unless the debtor is a consumer.

§ 10 Payment

1. Unless otherwise agreed, the invoices of Busch Microsystems GmbH must be paid within 14 days without deduction. Busch Microsystems GmbH delivers goods with a total value under 500,00 € cash on delivery, plus freight and packing.
2. Upon expiry of the above payment period, the customer shall be in arrears. During the period of arrears, interest shall be charged on the purchase price at the statutory rate of interest applicable at the time. Busch Microsystems GmbH reserves the right to claim further damages caused by default. The claim to the commercial interest on arrears (§ 353 of the German Commercial Code (HGB)) shall remain unaffected vis-à-vis merchants.
3. Busch Microsystems 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.
4. If Busch Microsystems 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 GmbH shall be entitled to declare that the whole of the outstanding debt is immediately payable, even if Busch Microsystems GmbH has previously accepted checks. In this case, Busch Microsystems GmbH is also entitled to demand advance payments or the provision of security.

5. 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 GmbH shall be entitled to repudiate the contract in respect of that part which yet not has been fulfilled.
6. Busch Microsystems 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 GmbH shall inform the purchaser of the assignment of the payment. If costs and interest have already occurred, Busch Microsystems GmbH shall be entitled to first credit the payment to the costs, then to the interest, then to the principal service.
7. We are entitled to assign the claims arising from our business relations.
8. The Offsetting on the part of the customer is excluded unless the counterclaims are legally established or not disputed by Busch Microsystems GmbH. The assertion of a right of retention by the customer is excluded, unless it is based on the same contractual relationship or the counterclaims are undisputed or legally binding.

§ 11 Applicable Law, Jurisdiction and Partial Invalidity, Language

1. These General Terms and Conditions and all legal relationships between Busch Microsystems GmbH and the customer shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The legal terms used in these General Terms and Conditions shall have the meaning ascribed to them under the laws of the Federal Republic of Germany.
2. The sole legal venue for all disputes arising directly or indirectly from the contractual relationship shall be Bad Kreuznach, if the customer is a merchant, legal entity under public law or special fund under public law. Busch Microsystems GmbH is also entitled to sue the customer at his general place of jurisdiction.
3. If a provision of these General Conditions is or becomes invalid, the validity of the remaining provisions or agreements between Busch Microsystems GmbH and the customer will not be affected hereby.
4. These General Terms and Conditions are issued in both the English and the German language. In case of any discrepancy, however, the German version of these General Terms and Conditions shall prevail.