

General Terms and Conditions of Sale of August Brötje GmbH, Rastede (Last revised: January 2017)

1. General, scope of applicability of these Terms and Conditions of Sale

- 1.1 These Terms and Conditions of Sale apply to all our business relationships with our customers (hereinafter referred to as "Buyers"), provided they are an entrepreneur (Section 14 German Civil Code [BGB]) or a legal entity under public law. An entrepreneur in the meaning of Section 14 BGB is a natural or legal person (e.g. GmbH, AG) or a partnership with legal personality (e.g. GbR, oHG, KG) who or which enters into a legal transaction as part of their professional or self-employed activity.
- 1.2 These Terms and Conditions of Sale apply particularly to agreements on the sale and/or supply of moveable or immovable items (also referred to hereinafter as "Goods") by us (Sections 433 and 651 BGB). The current version of these Terms and Conditions of Sale also apply as a framework agreement for future agreements on the sale and/or supply of moveable and/or immovable items with the same Buyer without us having to refer to these again in each individual case.
- 1.3 Our Terms and Conditions of Sale apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of business of the Buyer shall only form part of the agreement where we have given our express written consent to them. This written consent is required in all cases, for example, even if we acknowledge the Buyer's General Terms and Conditions of Business and supply the Goods without reservation.
- 1.4 Individual agreements with the Buyer (including ancillary agreements, supplements and amendments) entered into on a case-by-case basis shall always take priority over these Terms and Conditions of Sale. The contents of such agreements shall require a written agreement and/or our written confirmation in order to be valid.

- 1.5 Legal declarations and notices that the Buyer is required to submit to us following signing of the agreement (e.g. deadlines, notices of defects, declarations of withdrawal or reduction) shall only be effective in written form.
- 1.6 References to the validity of legal provisions are made for clarification purposes only. Even if this sort of clarification is not provided, legal provisions apply unless directly amended or expressly excluded within these Terms and Conditions of Sale.

2. Signing of an agreement

- 2.1 Our offers are subject to change and non-binding. This also applies if we provide the Buyer with either a physical or electronic copy of catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents.

The ordering of Goods by the Buyer shall be deemed to be a binding contractual offer. Unless otherwise agreed in the order, we are entitled to accept this contractual offer within 14 days following receipt of the offer.

Acceptance of the order can either be provided in text form (e.g. by means of an order confirmation) or by delivering the Goods to the Buyer.

3. Delivery deadline and default in delivery

- 3.1 Delivery deadlines shall be agreed in writing or in text form on an individual basis or shall be specified by us, as non-binding, when accepting the order.

- 3.2 Adherence to binding or non-binding deadlines, in writing or in text form, requires the clarification of all technical issues and the proper fulfilment of the Buyer's duties to cooperate and obligations. We are also entitled to plead non-performance of the agreement in this respect. If the technical issues and/or the Buyer's duties to cooperate and obligations are not fulfilled in good time, the deadlines shall be extended accordingly.
- 3.3 In the event that we are unable to adhere to the binding delivery deadlines for reasons that cannot be attributed to us (Goods not available), we shall inform the Buyer without delay and, at the same time, provide a new expected delivery date. If the Goods are still not available by the new delivery date, we are entitled to withdraw either fully or partially from the agreement. In this case, we shall reimburse any payments already received from the Buyer without delay.
- 3.4 A default in delivery on our part is determined in accordance with the legal provisions. However, the Buyer must issue a reminder in every case, even for binding agreed delivery deadlines. Should we default in delivery, the legal provisions shall specify the Buyer's rights.

4. Delivery, transfer of risk, delayed acceptance

- 4.1 Unless otherwise agreed, delivery shall be carried out ex works (EXW in accordance with ICC Incoterms 2010) from the BROTJE central warehouse, 26180 Rastede, Germany (hereinafter referred to as the "Warehouse"), which is also the place of performance. At the Buyer's request and own expense, the Goods can be sent to a different destination (via a carrier). Unless otherwise agreed, we are entitled to determine the means by which the Goods are shipped (in particular with regard to the carrier, route and packaging).

- 4.2 The risk of accidental damage to or deterioration of the Goods is transferred to the Buyer at the latest when the Goods are handed over. For deliveries that are sent by carrier, the risk of accidental damage to or deterioration of the Goods and the risk of a delayed delivery are transferred when the Goods are delivered to the logistics company, the freight forwarder or any other person or institution tasked with delivering the Goods. The Goods are considered delivered even if the Buyer delays the acceptance process.
- 4.3 If the Buyer is in default of acceptance or fails to provide the necessary cooperation under the agreement, or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation for the resulting damages, including for additional expenditure (e.g. storage costs), in accordance with the legal provisions.

5. Prices, terms and conditions of payment

- 5.1 Provided that no other provisions have been agreed on a case-by-case basis, our current prices at the time the agreement was signed shall apply ex works (EXW in accordance with ICC Incoterms 2010) from the warehouse plus the applicable value-added tax.
- 5.2 For Goods that are delivered by a carrier service (see Item 4.1), the Buyer bears the transport costs from the warehouse and the costs of any transport insurance required by the Buyer, where applicable. Any customs duties, fees, taxes or other public duties shall be borne by the Buyer. Reusable pallets shall only be loaned to the Buyer; the Buyer undertakes to return these in a good condition, i.e. completely empty and undamaged. In the event of any spoiling or damage, the Buyer shall pay any repair costs or, in the event that a repair is not possible, the cost of replacement.
- 5.3 The purchase price shall become due and payable within 14 days of invoicing and delivery of the Goods.

- 5.4 The Buyer shall be deemed in default upon expiry of the payment deadline without any requirement for a reminder. Interest shall be paid on the purchase price at the applicable statutory rate during the period of default. We reserve the right to assert any additional claims for damages caused by default in payment. Our right to charge merchants commercial default interest (Section 353 of the German Commercial Code [HGB]) remains unaffected.
- 5.5 The Buyer only has the right of retention or set-off to the extent that their claims are legally binding and undisputed. Furthermore, they shall only be entitled to exercise a right of retention against us insofar as their counterclaim is based on the same contractual relationship. Item 8.3 et seq. shall not be affected by any defects in delivery.
- 5.6 If it becomes apparent, after formation of the agreement, that our claim to the purchase price may be put at risk by the Buyer's inability to pay (e.g. a request to open insolvency proceedings), we are entitled to refuse delivery in accordance with the relevant legal provisions and withdraw from the agreement, if necessary after setting a deadline (Section 321 BGB). For agreements regarding the production of specific items (custom-made items), we can declare our withdrawal from the agreement immediately; the legal regulations regarding the dispensability of a deadline remain unaffected.

6. Application-specific advice

We give application-specific advice to the best of our knowledge based on our expertise and experience, without being obliged to do so. Despite any specifications, information and applications of any kind, the Buyer shall be obligated to carry out their own tests relating to the suitability of the products for the intended processes and purposes. These specifications and information are non-binding and, unless otherwise expressly agreed in writing, shall not form the basis for a separate contractual relationship or an auxiliary obligation under the supply agreement.

7. Use of our intellectual property, retention of title

- 7.1 We reserve all intellectual property rights and copyrights for illustrations, drawings, calculations, data and other documents; these must not be made accessible to third parties. This shall apply in particular to any information designated as confidential, whereby our express written consent is required in order to pass on this information. Item 12.2 applies accordingly.
- 7.2 Until all our current and future receivables from the purchase agreement and any ongoing business relationship (secured receivables) have been paid in full, we retain the right to ownership of the Goods sold. The Buyer undertakes to handle the Goods with care; in particular, they undertake to insure them at replacement value against fire, water and theft at their own expense.
- 7.3 The Goods to which the retention of title is reserved must not be pledged to third parties or assigned as collateral until the secured receivables have been paid in full. The Buyer must inform us in writing without delay if access to Goods belonging to us has been granted to third parties and also describe the extent of this access. If the Buyer culpably infringes this obligation, they are obliged to compensate us for the loss arising from this.
- 7.4 If the Buyer violates the terms of the agreement, in particular if the Buyer fails to pay the purchase price due, we are entitled, in addition to exercising our right to compensation for damages caused by delay (see Item 5.4), in accordance with the legal provisions, to withdraw from the agreement and/or request for Goods to be returned due to the retention of title.
- 7.5 As part of the ordinary course of business, the Buyer is authorised to resell and/or process Goods under retention of title. In this case, the following supplementary provisions apply:

- (a) The retention of title extends to the full value of the outcome of any processing of our Goods or if these Goods are combined or connected in any way. We are considered to be the manufacturer in this instance. Should our Goods be processed, combined or connected to a third party's goods, where the third party's right of title exists, we shall apply for co-ownership in proportion to the invoice value of the processed, combined or connected Goods. Furthermore, the same provisions apply to these outcomes as to the Goods delivered under retention of title.
- (b) As collateral, the Buyer shall assign to us all receivables from third parties resulting from the further sale of Goods or outcomes either in total or in proportion with our share of the co-ownership in accordance with the preceding paragraph. We accept the above assignment. The Buyer's obligation listed under Item 7.3 shall continue to apply for assigned receivables.
- (c) The Buyer remains authorised to collect the receivables in addition to us. We undertake not to recover liabilities provided that the Buyer fulfils their payment obligations to us, does not fall into arrears for their payments, has no request for opening insolvency proceedings submitted against them, and there are no further problems regarding their ability to pay. However, should any of these circumstances arise, we may demand that the Buyer informs us of the assigned receivables and their debtors, provides all the information required for the collection of receivables, hands out the relevant documentation and informs the debtors (third parties) of the assignment.
- (d) If the realisable value of collateral exceeds our receivables by more than 10%, we shall release collateral of our choice at the Buyer's request.

8. Buyer's claims for defects, quality

- 8.1 Any agreements made concerning the condition of the Goods shall provide the basis for our liability for defects. If no agreements have been made concerning the condition of the Goods, statutory regulations must be used as a basis to determine whether the Goods are defective or not (Section 434(1) sentences 2 and 3 BGB). However, we accept no liability for public statements issued by third parties (e.g. advertising messages).
- 8.2 The Goods supplied by us satisfy the laws, guidelines and other legal provisions applicable in the Federal Republic of Germany (hereinafter referred to as "provisions to be complied with"). The Buyer shall be solely responsible for compliance with the legal and other provisions of another state. The Buyer must notify us of any necessary changes to the Goods as a result of any resale in other states and shall bear the resulting costs of any necessary modifications.
- 8.3 In the event of material defects and defects of title (including incorrect or incomplete deliveries, faulty assembly or inaccurate assembly instructions), the legal provisions apply with regard to the Buyer's rights unless otherwise agreed in the following or in the BROTJE Terms of Warranty. The special legal provisions concerning the final delivery of Goods to the consumer shall remain unaffected in all cases (recourse of the entrepreneur as per Sections 478 and 479 BGB).
- 8.4 The Buyer's claims for defects require the Buyer to have fulfilled their statutory inspection and notification obligations (Sections 377, 381 HGB) and for the defect, or the cause of the defect, to have already existed at the time the Goods are handed over to the Buyer. If a defect becomes apparent during the inspection or at a later stage, we or our service company Brötje Heizung Kundendienst GmbH (August-Brötje-Straße 15a, 26180 Rastede, Germany, tel.: +49 (0) 4402 80 8520, fax: +49 (0) 4402 80 8530, e-mail: kundendienst@broetje.de) must be notified in writing without delay. The notification is deemed to have been sent without delay if it is sent within seven days, whereby notification must be within this time period in order to be valid. Irrespective of this obligation to inspect and

give notice of defects, the Buyer must send written notification of any visible defects (including any incorrect or incomplete deliveries) within seven days of delivery, whereby notification is still valid if sent within this time period to us or to Brötje Heizung Kundendienst GmbH. Should the Buyer fail to properly inspect the Goods or provide notification of defects, our liability shall be excluded for defects which have not been notified.

- 8.5 If the delivered items have defects, any warranty claims of the Buyer shall be processed by Brötje Heizung Kundendienst GmbH (see Item 8.4 for address and contact details). In this case, the Buyer is entitled, initially at the discretion of Brötje Heizung Kundendienst GmbH, to rectification of the defect (subsequent performance) or to delivery of a defect-free item (replacement delivery). For this purpose, the Buyer must give Brötje Heizung Kundendienst GmbH the necessary time to provide the subsequent performance and must hand over the Goods in question or make them accessible for inspection. We are entitled to make the necessary subsequent performance by Brötje Heizung Kundendienst GmbH dependent upon the Buyer paying the owed purchase price. The Buyer is entitled to withhold a portion of the purchase price in accordance with the extent of the defect (see Section 641(3) BGB). In the event that a replacement delivery is provided, the Buyer must return the defective items to us in accordance with legal provisions.
- 8.6 The costs required to inspect the items and carry out subsequent performance, in particular the costs for transport, handling, labour and materials, shall be borne by Brötje Heizung Kundendienst GmbH in the event of an actual defect. However, if the Buyer's request to rectify a defect proves to be unjustified, Brötje Heizung Kundendienst GmbH can ask for the resulting costs to be reimbursed by the Buyer.
- 8.7 If the subsequent performance fails, the Buyer may withdraw from the purchase agreement or reduce the purchase price. However, this right to withdraw does not exist in the case of an insignificant defect. Subsequent performance is deemed to have failed after the second unsuccessful attempt, unless the type of Goods, the defect or the other conditions in particular indicate otherwise.
- 8.8 The Buyer's claims to compensation or reimbursement of wasted costs shall only exist to the extent of the provisions under Item 10 and are otherwise excluded.

9. Buyer's exclusion of claims for defects

- 9.1 There shall be no claims for defects in the case of natural wear and tear, and/or after damage which occurs after the transfer of risk as a result of improper and/or negligent treatment, unsuitable operating equipment and/or objectionable water quality, an incorrect setting and/or burner selection, excessive stress, corrosion and/or stone deposits in the heat exchanger. Buyers and/or users must follow the requirements for the boiler and charge water set out in VDI (Association of German engineers) guidelines 2035 and by the VdTÜV (German Association of Technical Inspection Agencies), as well as in the most recent version of BROTJE installation instructions. There shall be no claims for defects, in particular for seals/sealing rings, nozzles, filters, ignition and monitoring electrodes, batteries, anodes, baffle plates for flame heads, thermal elements, pilot burners, electrode blocks, filters for oil pumps, gas filters and other wear parts, in the case of natural wear and tear and/or if a part is replaced as part of cyclical maintenance work.
- 9.2 There shall also be no claims for defects in the case of non-reproducible software errors and/or chemical, electrochemical or electrical influences (EMC), unless we are responsible for these.
- 9.3 If the Buyer or a non-licensed specialist company commissioned by them does not follow our assembly, installation and/or operating instructions and/or our technical information, if changes that are not permitted are made to the products and/or consumables are used that do not correspond to the original specifications, our warranty and/or liability for material defects shall lapse; anything to the contrary shall only apply if the warranty claim can be proven not to be attributable to an aforementioned exclusion.

9.4 Our warranty and/or liability shall not apply if the system is not installed and commissioned by a licensed specialist company in accordance with the applicable specifications, regulations, standards, assembly and installation instructions, technical information and laws. We shall also not be liable in the case that our BRÖTJE product accessories are not used or if original spare parts are not used for maintenance work. Anything to the contrary shall only apply if the liability claim can be proven not to be attributable to an aforementioned exclusion.

10. Other liability

10.1 Unless otherwise specified by these Terms and Conditions of Sale, including the following provisions or a separate written agreement between us and the Buyer – whatever the legal basis – we are liable for the infringement of the applicable legal provisions.

10.2 If we breach an essential contractual obligation as a result of gross or slight negligence, our duty to compensate shall be limited to foreseeable damage typical of this kind of agreement. Essential contractual obligations are those obligations that must be fulfilled to enable proper enforcement of the agreement and on which the Buyer can regularly rely. Our liability is excluded in all other respects, i.e. in all cases of other slightly negligent breaches of duty. Our unlimited liability due to malicious intent, a breach of the Product Liability Act, any warranty or loss of life, bodily injury or damage to health, remain unaffected by this limitation of liability.

11. Limitation period

11.1 If a limitation period has not been expressly agreed in writing between the parties, the legally intended limitation periods shall apply for the relevant Goods. These periods shall begin upon the transfer of risk (see Item 4.2).

11.2 The limitation period for claims due to defects in parts not affected by subsequent performance in the meaning of Items 8.5 to 8.7 shall not be affected by the subsequent performance.

12. Information on data protection, confidentiality

- 12.1 The Buyer acknowledges the fact that we save data received about the Buyer which arises in connection with the business relationship, regardless of whether this originates from the Buyer themselves or from third parties, for the purpose of establishing and performing the business relationship. The data is saved for internal use only. This data shall only be passed on to external service providers for the purposes named above and taking into account specifications under data protection law. BROTJE shall also, where necessary, form separate agreements in which the external service providers are obliged to comply with the applicable legal specifications.
- 12.2 Both contractual parties undertake to treat information and data from the mutual business relationship as confidential. In the event of any infringement, we reserve the right to make claims to compensation and to initiate criminal proceedings.
- 12.3 Our obligation to maintain confidentiality vis-à-vis the Buyer shall not apply to companies associated with us in the meaning of Section 15 German Stock Corporation Act [AktG] or in the case that content forming part of the agreement/information (i) is already known to us; (ii) becomes publicly known to us through no unlawful act; (iii) is lawfully communicated to us by a third party who is not subject to similar limitations and thus does not infringe any relevant obligations; (iv) is developed independently by us and is not therefore associated with any contractual breach; (v) is passed on with the Buyer's written approval; or (vi) which we must pass on due to a court order, an official order or by law.

13. Miscellaneous

13.1 Should individual provisions of these Terms and Conditions be or become invalid, ineffective or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions.

13.2 The Buyer is only entitled to assign claims based on the underlying business relationship with our prior written consent.

14. Choice of law and place of jurisdiction

14.1 With regard to these Terms and Conditions of Sale and all legal relationships between us and the Buyer, the law of the Federal Republic of Germany shall apply to the exclusion of all international and supranational (contractual) legislation, in particular the UN Convention on Contracts for the International Sale of Goods. Requirements and effects of retention of title as per Item 7 are subject to the law of the respective location of the items, insofar as the choice of law made in support of the German law is incorrect or ineffective.

14.2 If the Buyer is a merchant as defined in the German Commercial Code, a legal entity under public law or a special fund under public law, Oldenburg (Oldbg.) in Germany shall be the exclusive place of jurisdiction – including on an international level – for all disputes arising from the contractual relationship, either directly or indirectly. However, we shall also have the right to initiate legal proceedings at the Buyer's general place of jurisdiction.