GENERAL TERMS AND CONDITIONS

Including special conditions for the sample and commission business
of the
company
Friedrich Binder GmbH & Co. KG
Leonberger Straße 34
Germany – 71297 Mönsheim

Version dated: September 2018

1. Area of application

1.1. Our general terms and conditions apply exclusively. Where no provisions are made, the law applies. We do not recognise provisions of the contractual partner that are contrary to or deviate to our disadvantage from our general terms and conditions and the law unless we have explicitly agreed to their validity in writing. Our general terms and conditions also apply in cases in which our contractual services or deliveries are delivered without reservation and in full knowledge of provisions of the contractual partner that are contrary to or deviate to our disadvantage from our general terms and conditions and the law.

1.2. Our general terms and conditions also apply to all future business with the contractual partner.

1.3. Our general terms and conditions only apply to entrepreneurs, legal persons governed by public law or special funds under public law in terms of § 310 clause 1 *BGB* [Bürgerliches Gesetzbuch, German Civil Code].

2. Offers and cost estimates

Our offers and cost estimates are – unless explicitly stated to be binding – without obligation and non-binding.

We reserve all rights to offer documentation and contractual documents, especially designs, drawings, images, etc. as well as patterns, models and prototypes, insofar as they are not granted to the contractual partner based on spirit and purpose of the contract or on explicit agreement. Offer documentation as well as patterns, models and prototypes must be returned to us immediately on request if we are not awarded the contract. Respecting these, the contractual partner has no right of retention.

3. Prices, payment conditions, reservation of supplementary performance

3.1. We reserve the right to reasonably increase our prices if an increase of costs we are not responsible for occurs after the contract has been concluded, especially based on the conclusion of collective wage agreements or changes in the price of materials. On request, we will provide the contractual partner with corresponding proof.

3.2. Our prices are given as ex factory Mönsheim, excluding postage, shipping, freight charges, packaging and insurance, subject to special arrangements. VAT will be invoiced separately at the respective statutory rate.

3.3. Subject to special agreements, the contractual partner has to make payments within 10 days from the date of the invoice. If the contractual partner has not paid, the payment will be considered as delayed if it has not been made within 10 days of the due date without further notification on our part being necessary. Statutory provisions apply to the consequences of default of payment.

3.4. We have the right to demand reasonable advance payments plus the applicable statutory VAT amount.

3.5. If, in cases of purchase contracts and contracts for labour and materials, we grant the contractual partner the option to pay only pattern costs in money and the remaining price by delivering a corresponding amount of precious metals (so-called "split purchase price"), the delivery of precious metals has to be made concurrently to the delivery of goods. The precious metals are delivered at the costs and risks of the contractual partner. The precious metals will pass into our ownership upon delivery. The delivery will be credited to the metal account. No discounts are granted. If the contractual partner is responsible for delayed delivery, he is liable to payment of compensation.

3.6. Bills of exchange and cheques are only accepted as payments, bills of exchange only if agreed beforehand in writing. The contractual partner will bear the discount, expenses and costs associated with collection of the amount stated on the bill of exchange or cheque and are payable immediately. Fulfilment is only achieved when the cheque or bill of exchange is cashed and we are exonerated from any liability.

3.7. The contractual partner only has the right to setoffs if his claims have been legally determined and are uncontested or recognised. The contractual partner only has a right to exercise a right of retention insofar as his claim is based on the same contractual relationship.

4. Delivery or performance time, delays of delivery or performance for which no responsibility can be assumed, default of delivery or performance, impossibility, default of acceptance, violation of obligations to co-operate

4.1. The delivery or performance times stated are only considered as fixed date if they have been explicitly agreed as such.

4.2. Prerequisites for compliance with delivery and performance obligations, especially delivery dates, are:

- Timely and proper meeting of possible co-operation obligations of the contractual partner, especially receipt of documents and information that are to be provided by the contractual partner;
- Clarification of all technical details with the contractual partner;
- Receipt of agreed advance payments or opening of letters of credit;
- Obtaining any official approvals and licences that may be required.

The right of defence of non-fulfilment of the contract remains reserved.

4.3. We do not accept responsibility for delays of delivery or performance based on the following hindrances to delivery or performance, unless we assumed procurement risks or a guarantee specifically in regard to compliance with delivery times or deadlines by way of exception; the same applies if these hindrances arise for one of our suppliers or their subcontractors:

Events of force majeure and hindrances to delivery and performance

- that only occur after conclusion of the contract or that become known to us only after the contract had been concluded due to circumstances we are not responsible for and
- which verifiably could not be foreseen and prevented by us, not even by due diligence, and for which we insofar did not violate obligations regarding assumption, precaution or prevention.

Subject to the aforementioned prerequisites – occurrence or us becoming aware of these without being responsible after conclusion of contract, impossibility to foresee or prevent which has been proven by us – these events especially include:

justified industrial actions (strikes and lockouts); disruption of operations; scarcity of resources; failure of operating equipment and auxiliaries. In the aforementioned cases, the contractual partner does not have any rights to claim damages based on delay

of delivery or performance. In case of final hindrance to delivery and performance in the above sense, each contractual party has the right to terminate the contract with immediate effect by termination in accordance with statutory regulations.

In cases of hindrance to delivery and performance in the above sense, we have the right to postpone deliveries and performances for as long as the hindrance lasts plus a reasonable start-up period.

5. Transfer of risks, defence of insecurity

5.1. If CISG provisions apply, the risk of accidental loss or accidental deterioration will be transferred to the contractual partner when the shipment has been transferred to the person or entity charged with the collection or execution of the shipment.

5.2. If a mutual contract gives rise to the obligation of having to provide advance performance, we have the right to refuse this performance if it becomes apparent, after the contract has been concluded, that our claim to consideration is at risk due to a lack of performance capacity on the part of the contractual partner. We have the right to determine a period within which the contractual partner has to simultaneously deliver a consideration of his choice or provide securities for our performance. If this has not been achieved upon expiry of the period, we have the right to terminate the contract. Insofar as we already have provided performances, we have the right to accelerate maturity of resulting claims that are not yet due, including any claims based on cheques or bills of exchange, to have immediate effect. We also have the right to terminate the contract instead. Moreover, we already have the right to accelerate maturity of claims arising from the same legal relationship if the contractual partner is delayed in payment of at least 25% of total liabilities towards us (undisputed principal claim) for more than 6 weeks. The same applies if it becomes known to us that a bill of exchange is protested against or that enforcement proceedings are opened against the contractual partner or if any other deterioration of assets occurs. Additionally, we have the right to terminate the contract if the contractual partner culpably provides incorrect or incomplete information about aspects determining his creditworthiness.

6. Reservation of title

6.1. We retain title to the delivered items (“reserved delivery”) until all payments arising from the business relationship with the contractual partner have been received. The reservation of title also includes the agreed balance of account, insofar as we enter claims against the contractual partner into outstanding accounts (“current account reservation”). If an exchange liability on our part is justified for payments to be made to us for a reserved delivery, the reservation of title will not expire before our exchange liability; if the cheque procedure has been agreed with the contractual partner, the reservation also includes the cashing of the bill of exchange we accepted by the contractual partner and will not expire upon the crediting of the cheque received in our accounts.

6.2. The contractual partner has the right to re-sell the reserved delivery in the ordinary course of business; however, he already assigns to us all claims amounting to the final invoice amount (including VAT) of our claims against his customers or third parties that arise for him in the re-selling. If the contractual partner adds the claims based on a re-selling of the reserved delivery to a current account relationship he has with the customer, the current account claim, totalling the agreed balance of account, is transferred; the same applies to the “causal” balance of account in case of insolvency of the contractual partner. The contractual partner may collect the transferred claims even after they have been transferred. The above applies without prejudice to our right of collecting the claims ourselves, subject to regulations of insolvency law; but we commit to not collecting the claims as long as the contractual partner does not violate his contractual obligations, especially as long as he meets his payment obligations in due form, does not delay payment and no application to open an insolvency proceeding is filed or no suspension of payments occurs. The contractual partner’s right to re-selling does not include chattel mortgages or pledging.

6.3. In case of omission of our obligation to not collect the claims ourselves in accordance with clause 6.2. above, we have the right, subject to regulations under insolvency law, to revoke the right to re-selling and to withdraw the reserved delivery or to demand the transfer of issuance claims of the contractual partner against third parties to us. Us withdrawing the reserved items constitutes a termination of the contract.

We have the right to reasonably utilise the reserved delivery withdrawn on the aforementioned grounds – subject to regulations under insolvency law – after prior warning and determining a deadline; the utilisation proceeds have to be offset against the obligations of the contractual partner, minus reasonable utilisation costs.

The same preconditions that grant us the right to revoke the contractual partner’s right of re-selling also give rise to the right of revoking the collection authorisation and to demand that the contractual partner will provide details regarding the transferred claims and the respective debtors, all information required for collection, will hand over relevant documents and inform the debtor (third party) of this transfer.

6.4. The contractual partner has to notify us immediately in writing of damage or loss of the reserved delivery as well as change of title or residence. The same applies to pledging or any other involvement of third parties, so that we may file a lawsuit in accordance with § 771 *ZPO* [Zivilprozessordnung, code of civil procedure]. Insofar as the third party may be unable to reimburse the costs of the legal and extrajudicial costs of a proceeding in terms of § 771 *ZPO*, the contractual partner will be liable towards us for our losses. If the reserved delivery is released without a legal proceeding, the expenses incurred may also be born by the contractual partner; the same applies to the costs of returning the pledged reserved delivery.

6.5. The processing and alteration of the reserved delivery by the contractual partner always takes place on our behalf. If the reserved delivery is processed together with items that do not belong to us, we acquire title to the new product in proportion of the value of the reserved delivery (total invoice amount including VAT) to the value of the remaining items that were processed at the time of processing or alteration.

The same provisions that apply to the reserved delivery apply to the product created by processing or transformation. The contractual partner is granted a remainder of the processed or altered item that corresponds to the remainder of the reserved delivery.

6.6. If the reserved delivery is inseparably mixed with or connected to items that do not belong to us, we acquire joint title to the resulting product in proportion of the value of the reserved delivery (total invoice amount plus VAT) to the value of the remaining mixed or connected items at the time of mixing or connection. If the mixing or connection results in a product in which the item of the contractual partner constitutes the main part, it is considered as agreed that the contractual partner will grant us joint title on a pro rata basis. The contractual partner will keep the sole or joint title on our behalf.

6.7. If the contractual partner re-sells the reserved delivery after processing or alteration, he already assigns his remuneration claims amounting to the total amount of the final invoice (including VAT) of our claims to us as security.

If we only have joint title in terms of clauses 6.5. and 6.6. above due to processing or alteration or mixing or connection of the reserved delivery with other items, the remuneration claim of the contractual partner will only be assigned to us beforehand in proportion of the final amount we invoice, including VAT, for the reserved delivery to the final invoice amounts of the remaining items not belonging to us.

Apart from that, the clauses 6.2. to 6.4. above apply accordingly to claims assigned to us in advance.

6.8. If our reserved delivery is under the jurisdiction of foreign law and if the right of retention or the assignment are not effective under this foreign law, the security that corresponds to the right of retention and assignment under this foreign law is considered as agreed.
If the co-operation of the contractual partner is required for these rights to arise, he has the obligation to take all measures necessary to give rise to and to maintain such rights on our request.

6.9. The contractual partner is obligated to treat the reserved delivery with care and to maintain it at his costs; especially, the contractual partner is obligated to insure the reserved delivery at his costs and at our favour at the original value against theft, robbery, burglary, fire and water damage. The contractual partner already assigns all resulting insurance claims in regard to the reserved delivery to us. We accept the assignment.
Besides, our rights to claims for performance or damages remain reserved.

6.10. The contractual partner also assigns the claims arising in regard to the reserved delivery in combination with real estate against third party to us to hedge our claims against him.

6.11. We commit to release the securities we are entitled to on request of the contractual partner insofar as the realisable value of our securities will exceed the claims to be hedged by more than 10%; we have the right to choose which securities we want to release.

7. Rights in cases of deterioration of financial situation – Granting of credit note

7.1. If the mutual contract gives rise to the obligation of having to provide advance performance, we have the right to refuse this performance if it becomes apparent, after the contract has been concluded, that our claim to consideration is at risk due to a lack of performance capacity on the part of the contractual partner. We have the right to determine a period within which the contractual partner has to contemporaneously deliver a consideration of his choice or provide securities for our performance. If this has not been achieved upon expiry of the period, we have the right to terminate the contract. Insofar as we already have provided performances, we have the right to accelerate maturity of resulting claims that are not yet due, including any claims based on cheques or bills of exchange, to have immediate effect. We also have the right to terminate the contract instead. Moreover, we already have the right to accelerate maturity of claims arising from the same legal relationship if the contractual partner is delayed in payment of at least 25% of total liabilities towards us (undisputed principal claim) for more than 3 weeks.

7.2. In cases of final withdrawal of goods, especially due to payment difficulties or insolvency of the contractual partner etc. a credit note will be issued. We reserve the right to reduce payment amounts depending on, e.g.:

- The outward appearance of the item at the time of return (e.g. costs resulting from possible re-working, repeated labelling in case the label has been removed by the contractual partner or if the original label faded or has been damaged during storage and/or became unattractive);
- A reduction of value corresponding to the time between delivery and return based on changes in fashion or technological advances;
- Sales costs (sales representatives) we incurred; in this case, we have the right to deduct a lump sum of 10% ;
- Losses due to fluctuations of the prices for precious metal in comparison to the invoice date. The decisive factor is the current rate on the day the reserved goods are returned to us.

The contractual partner reserves the right to proof at his costs that the reduction is not permissible or only permissible to a significantly lower extent.

7.3. There is no basic legal claim to granting of credit entry.

8. Rights, contractual penalty

All rights (especially ownership and copyrights or copyright-based rights of use as well as industrial property rights) to contractual documents (especially designs, drawings, brochures, catalogues, images, calculations, product descriptions, etc.) as well as samples, models and prototypes made available to the contractual partner within the scope of our business relationship belong to us, subject to explicit agreements to the contrary. The contractual partner commits to pay a contractual penalty amounting to EUR 5,000.00 to us in case of violation of the aforementioned obligation, unless he proves that he is not responsible for the non-compliance. We reserve the right to claim additional damages.

9. Performance specification, liability for defects

9.1. The conditions specified in our performance specifications provide a comprehensive and final description of the features of our deliveries. In cases of doubt, the descriptions of our deliveries and performances are the subject of condition agreements and not of guarantees or warranties. In case of doubt, declarations made by us in regard to this contract do not contain guarantees or warranties in the sense of an increase of liabilities or assumption of a special obligation to assume liabilities. In cases of doubt, only express written declarations made by us are effective in regard to providing guarantees and warranties.

9.2. No liability is assumed for damages based on the following reasons: unsuitable or improper use or operation, incorrect installation by the contractual partner or a third party, normal wear and tear, incorrect or negligent handling, unsuitable means, chemical, electrochemical or electrical influences (unless we are responsible for them), improper alterations or maintenance work done by the contractual partner or a third party or any of these that have not been approved by us beforehand.

9.3. The contractual partner cannot assert claims for defects in cases of only minor deviation from the agreed condition of our delivery or service or in cases of only minor limitations to usability thereof.

9.4. A prerequisite for exercising rights of claims for defects of the contractual partner is due compliance with the obligations to examine the goods and to make a complaint in case of a defect in terms of § 377 *HGB* [Handelsgesetzbuch, commercial code].

9.5. If a defect occurs, we have the right to choose a means of supplementary performance, either in the form of correction of defects or of delivering a new, flawless item. If one or both of these means of supplementary performance should prove impossible or unreasonable, we have the right to refuse it.
We also have the right to refuse supplementary performance for as long as the contractual partner has not met his payment obligations towards us for the part of the delivered performance that is free of defects.
We are obligated to bear all costs necessary for delivering the supplementary performance, especially transport costs, road maintenance fees, labour and material costs, insofar as these are not increased by the delivery having been forwarded to a location other than the place of performance, unless this forwarding falls into the scope of intended use.
We have the right to contract a third party for the removal of the defect. Replaced parts pass into our ownership.

9.6. In case of impossibility or failure of supplementary performance, culpable or unreasonable delay or serious and final refusal of supplementary performance on our part or unreasonableness of the supplementary performance for the contractual partner, he has the right to choose if he wants to reduce the purchase price accordingly (reduction) or to terminate the contract (termination).

9.7. Unless stated otherwise in clauses 9.8. and 9.9., further claims of the contractual partner that are related to defects of our deliveries and performances, irrespective of the legal reasons (especially damage claims based on defects and violation of obligations, tort claims for compensation for property damage as well as claims for compensation of expenses) are foreclosed;

this applies in particular to claims arising from damages not pertinent to the delivered goods themselves, e.g. to other property of the contractual partner, as well as claims for compensation for loss of profit.

9.8. The exemption from liability specified in clause 9.7. above does not apply to:

9.8.1. damages for injury to life, body or health, arising from culpable violation of obligations on our part or that of our legal representatives or vicarious agents;

9.8.2. mandatory liability in accordance with product liability law;

9.8.3. in case of malicious concealment of a defect, in case of assumption of guarantees or assuring a condition, if a defect included in these gives rise to our liability;

9.8.4. culpable violation of a major contractual obligation or "cardinal" obligation on our part or that of our legal representatives or vicarious agents; insofar as there is no evidence of intentional violation of the contract or violation based on gross negligence, the damages liability is limited to the foreseeable, typically occurring damage;

9.8.5. other claims of the contractual partner for compensation instead of performance that we, our legal representatives or vicarious agents are liable for; but insofar as there is no evidence of intentional or grossly negligent violation of the contract, the damage liability is limited to the foreseeable, typically occurring damage;

9.8.6. other damage based on the intentional or grossly negligent violation of obligations on our part or that of our legal representatives or vicarious agents; insofar as there is no evidence of intentional violation of the contract the damage liability is limited to the foreseeable, typically occurring damage.

9.9. In the case of compensation for expenses, clause 9.8. applies accordingly.

9.10. Clause 9., especially clauses 9.7. to 9.9. applies without prejudice to statutory regulations on burden of proof.

10. Rights to know-how and inventions

We have the exclusive right to existing secret, valuable and advanced knowledge (know-how) on our part or any such know-how that is gained in implementing the contract concluded with us as well as inventions and possible pertinent industrial property rights, subject to separate agreement on use or utilisation of the delivered goods which the contractual partner is entitled to in spirit and purpose of this contract relationship.

11. Violation of the rights of third parties

We cannot guarantee that the use or re-sale of the delivered goods will not violate the property rights of third parties; however, we confirm that we are not aware of the existence of any such property rights of third parties to the delivered goods.

12. Limitation of actions

The limitation period for claims and rights due to defects of the deliveries or performances – irrespective of legal grounds – is one year.

13. Assignment of claims by the contractual partner

The assignment of claims towards us based on deliveries and performances provided by us requires our prior written permission.

14. Place of performance, applicable law, intra-community acquisition, severability clause

14.1. Subject to special arrangements, the exclusive place of performance is our company seat in Mönsheim.

14.2. If the contractual partner is a trader in terms of the *Handelsgesetzbuch* [commercial code], a legal person governed by public law or special fund under public law, the place of jurisdiction for all obligations arising from and included in the contractual relationship – including matters of bills of exchange and cheques – is our company seat or, if we so choose, the company seat of the contractual party. The agreement on place of jurisdiction also applies to contractual partners whose company seat is abroad.

14.3. All rights and obligations arising from and in connection to the contract, without consideration of conflict-of-law rules, shall be exclusively governed by the laws of the Federal Republic of Germany, excluding the CISG (United Nations Convention on Contracts for the International Sale of Goods dated 11/04/1980).

14.4. If one provision of these GENERAL TERMS AND CONDITIONS or a provision in other agreements between us and the contractual partner is or becomes void, the validity of all remaining provisions or agreements will remain unaffected.

14.5. In cases of intra-community acquisition, contractual partners from EU member states have the obligation to reimburse us for damage we may incur

- due to tax offences committed by the contractual partner himself or
- due to incorrect or omitted information of the contractual partner regarding aspects pertinent to his taxation.

15. Additional special conditions for sample business/commission business

15.1. The implementation and maintaining of sample business/commission business is the sole responsibility of the contractual partner; he also bears all costs.

15.2. We have no obligation to maintain a specified minimum stock level for the contractual partner.

15.3. The sample products/commission products are our property. The contractual partner will immediately inform us about all incidents involving the ownership of the sample goods/commission goods.

15.4. We have the right to ascertain the proper storage of sample goods/commission goods and the right to stocktaking for ourselves or to have this done by a third party at any time.

15.5. The contractual partner is obligated to check the sample goods/commission goods upon delivery regarding quantity and faultlessness, especially in regard to compliance with specifications including article numbers, as required by the *HGB*. We have to be immediately notified of any defects, including specification of the article number. Defects that were not detected in the mandatory inspection have to be brought to our attention immediately upon discovery.

15.6. The contractual partner is liable for loss, improper use or damage of the sample goods/commission goods that are under his care, unless the loss, improper use or damage is due to causes that cannot be prevented by due diligence of a prudent businessman.

15.7. The contractual partner has the right to remove sample goods/commission goods from the warehouse to hand it over to users and to sell and transfer it to them.

15.8. Removing the sample goods/commission goods constitutes, in regard to the sample goods/commission goods removed, a purchase contract for the price applicable at the day of removal or the price agreed between us and the contractual partner. The same applies if the sample goods/commission goods are not returned within the agreed period.

15.9. The contractual partner has to inform us about the quantity of sample goods/commission goods removed in the previous month no later than on the tenth of each month. This notification has to be made in writing and has to include the article number and the quantity removed. Based on the quantity consumed that was reported to us, we will issue an invoice bearing the date of the notification. The contractual partner has to pay the bill in accordance with the agreed payment conditions.

15.10. We can demand the goods on consignment to be returned at any time. The return takes place at the costs and risks of the contractual partner.

15.11. The contractual partner cannot exercise a right of retention against our request for return. Differences in inventory, improper use or damage of the delivered sample goods will be invoiced to the contractual partner.

15.12. Upon transfer of the sample products/commission products to the contractual partner or the shipment to the carrier, all risks, especially the risks of non-culpable destruction and loss, are transferred to the contractual partner.

15.13. The contractual partner has the obligation to provide sufficient insurance cover for our sample products/commission products and, in particular, to insure these against robbery, burglary, theft, fire and water damage. He already assigns his claims against the insurer to us. We hereby accept the assignment.