

# General Conditions of Tender and Sale

2016

## 1. DEFINITIONS

(a) "Buyer" means the company buying Products from Seller as specified in Seller's order confirmation or in the relevant Contract.

(b) "Contract" means the agreement between the Seller and the Buyer as regards the sale of Products to Buyer, including these General Conditions.

(c) "General Conditions" means these General Conditions of Tender and Sale.

(d) "Products" shall mean any products to be delivered from Seller to Buyer.

(e) "Seller" means Brdr. Christensen ApS ("BCH").

(f) "Tender" means any tender or offer to sell Products provided by the Seller to the Buyer.

## 2. SCOPE

(a) These General Conditions set out the standard terms on which the Seller supplies the Products to the Buyer and they shall apply to all Tenders, quotations and sales unless otherwise agreed in writing.

(b) The Seller shall not be bound by conflicting purchasing conditions or reservations made by the Buyer even if the Seller has not explicitly contradicted the conditions or reservations. The Buyer may not assign his rights and obligations under these General Conditions.

(c) The validity and enforceability of other clauses in these General Conditions will not be affected if one of the clauses is or becomes illegal, invalid or unenforceable.

## 3. VALIDITY OF TENDERS AND ORDERS

(a) Buyer shall accept a Tender no later than 30 days from the date of the Tender (the "Tender Period") unless otherwise agreed in writing. The Tender is subject to all necessary licenses and technical data being available in the agreed timeframe and compliance with the provisions of the agreed terms of payment. If any underlying conditions or assumptions of the Tender change during the Tender Period Seller reserves the right to change the Tender to reflect such changes, for example in case of increased raw material prices.

(b) The Seller is only bound by an order if he accepts it in writing or delivers the Products ordered by the Buyer.

## 4. PRICES

(a) The Seller's standard prices (the "Prices") applicable on the date of conclusion of the Contract shall apply, unless

otherwise agreed in writing.

(b) Prices do NOT include VAT, taxes, duties or any loading and delivery costs, which Buyer must pay in addition to the Prices. All Prices include the Seller's standard packing, but not pallets or crating for export goods.

(c) Prices are based on present material, purchasing (London Metal Exchange) and freight costs. In the event of an increase of more than 10 % in any of the aforementioned factors within the period between the conclusion of the Contract and the time of actual delivery, the Seller reserves the right to adjust the prices to directly reflect such changes.

## 5. PAYMENTS, TERMINATION, CANCELLATION AND LICENCES

(a) Payment must be made in the currency specified on the invoice.

(b) Any bank charges levied on payments, and any financing expenses etc. shall be borne by the Buyer.

(c) Interest will be charged on overdue payments at the rate of 1.5% percent per commenced month.

(d) The Buyer shall indemnify the Seller for all costs and expenses that the Seller incurs in collecting overdue amounts.

(e) The Seller is entitled to terminate the Contract immediately by written notice to the Buyer if the Buyer is in material breach of his obligations under the Contract or any other agreement with the Seller. Material breach shall include, but not be limited to, situations where:

- (i) the Buyer fails to meet his liabilities when they fall due,
- (ii) the Buyer seeks a composition with his creditors,
- (iii) all or part of the Buyer's property is subject to receivership, or
- (iv) a petition for liquidation, winding-up or administration is filed in respect of the Buyer.

(f) In the event that the Buyer gives notice of termination of delivery, except as stated in clause g) below, all outstanding installments shall be accelerated and deemed due and payable immediately.

(g) Cancellation of orders: Unless otherwise agreed between Seller and Buyer in writing the following shall apply:

Seller will accept the cancellation of orders up to 7 days after Buyers' placing of the order.

If the Buyer cancels an order 8 days or more after he placed the order, and provided that the casting process of the ordered Products has not yet started, Seller will accept the cancellation of the order provided that Buyer shall pay 25% of the purchase Price for the ordered Products.

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If Seller has commenced the casting process of the ordered Products, Buyer shall only be allowed to cancel the order against payment of 100% of the purchase price for the ordered Products.

(h) The Buyer may not withhold, set off or deduct claims against the Seller from any amount that he owes the Seller under the Contract or any other agreement with the Seller.

(i) The Seller's obligation to deliver the Products shall terminate if the Buyer fails to make due payment of any amounts that he owes the Seller at the date of delivery under the Contract or any other agreement with the Seller. Furthermore, the Seller shall be entitled to suspend delivery of the Products if the Buyer is in default and such suspension of delivery shall not affect the Seller's other rights under the Contract or any other agreement with the Buyer. The Seller is not obliged to resume deliveries until the Buyer has paid all overdue amounts, including all expenses and accrued interest.

(j) It is the Buyer's exclusive responsibility to obtain all licenses, exchange control documents and other consents needed for the export and import and use of the Products. The Buyer shall not be discharged from his obligations under these General Conditions if he fails to obtain a license or other consents.

## 6. DELIVERY AND FORCE MAJEURE

(a) The Products are delivered according to the agreed terms Incoterms 2010) at the place named in Sellers order confirmation or in the Contract.

(b) Any claims relating to damage in transit, if the goods are at Seller's risk, for example missing components and equipment etc. will not be accepted if the said claims are made later than 30 days after the date of delivery.

If the Buyer does not receive the Products on the agreed date of delivery, he must notify the Seller within 48 hours of the agreed date of delivery. The Seller disclaims all liability, and the Buyer waives his rights of recovery, under this provision unless the Buyer's information is sufficient to allow the Seller to make a valid claim against the carrier of the Products for such damage, loss or shortage.

(c) The Seller is released from his obligation to deliver the Products on the original delivery date, and is allowed to extend the date of delivery, if events beyond his reasonable control including but not limited to shortage of raw materials (force majeure) prevent him from performing the Contract.

(d) The Seller may withhold, reduce or suspend delivery of the Products to reasonably allocate his supply capacity between the Buyer and his other customers if events beyond his reasonable control prevent him from delivering all the Products and fully comply with orders from his other

customers.

## 7. PASSING OF RISK AND TITLE AND RETURNS

(a) The Seller's liability for risk of loss or damage to the Products passes from the Seller to the Buyer at the earlier of the following two points in time:

- (i) when the Products are delivered to the Buyer, the Buyer's agent, or a person that the Buyer has authorized to accept delivery, or
- (ii) the agreed date of delivery, if the Buyer fails to take delivery as required under the Contract.

(b) The Seller remains the owner of the Products until he receives full payment for all Products whether or not the Products have been delivered to the Buyer. If the Buyer resells the Products to a third party before the Seller receives full payment, the proceeds of the sale shall first apply to pay all amounts due to the Seller. In the event that the Buyer has not paid the full purchase price or if insolvency proceedings are commenced against the Buyer, the Seller or his representative is entitled to recover or resell the Products and to enter the Buyer's premises for that purpose and such steps shall not affect the Seller's other rights.

(c) All sales are final. The Buyer is not entitled to credit for returned Products whether or not he has made a complaint or a claim, unless otherwise agreed in writing in which case the Buyer is obliged to return such Products promptly and in good condition, carriage-paid.

## 8. THE SELLER'S WARRANTY AND LIMITATIONS OF LIABILITY

### The Seller's Liability for the Products

(a) The Seller warrants that the Products are of sound material and workmanship and conform to the Product information that applies at the date of purchase. This Clause 8 provides the only warranty for the Products, and it replaces and supersedes all other warranties for the Products, whether express or implied. The Seller shall have no other liability under the Contract (express or implied for the quality, performance, merchantability or fitness for any purpose of the Products.

(b) The Seller's warranty does not include defects or damage that occurs in areas that are not reasonably accessible through ordinary means of repair because of their shape or location. Nor does the Seller's warranty include damage which is caused by mechanical damage, welding or other heating, bacterial attack, pollution, electromechanical actions, damage during repair, deterioration beneath applied coatings or friction, except for ordinary wear and tear. **The Seller is only liable under this warranty, if the Buyer has:**

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(i) transported, stored, handled and used the Products in accordance with all information given to the Buyer by the Seller and any international customs of the trade,

**(iii) made a written claim documenting the alleged defect in or damage to the Products within 10 days of the date when the Buyer first became aware or could reasonably have become aware of the defect or the damage,**

(iv) allowed the Sellers reasonable time to inspect the Products and the area of their application,

(v) complied with his obligations under the Contract, including making timely payment of the purchase price, and

(vi) stopped using the Products as soon as he detected or could have detected the defect.

(c) In the event of a breach of warranty under this Clause 8, the Seller must at his own option either i) repair the Product, ii) replace the Product or iii) pay the costs of purchasing equivalent BCH Product(s), however the Seller is not obliged to pay any amount above the invoiced price for the Products. The Buyer is not entitled to any other remedy once the Seller has repaired or replaced the Products or paid the costs of purchasing equivalent BCH Products elsewhere. The Seller may suspend subsequent deliveries of the Products or postpone corresponding dates of delivery accordingly until the validity of the Buyer's claim has been finally determined.

## The Seller's Liability for Technical Advice or Other Services

(e) The Seller is only liable for technical advice, instructions and other information about the use of the Products or other services provided by himself or his representative if the Buyer can demonstrate that:

(i) the Seller has given the advice or services negligently in light of the information, equipment and knowledge available to the Seller at the time, and ii) the Buyer has suffered a direct loss as a result.

## Limitation of Liability

(f) The Seller's liability to the Buyer shall not exceed the invoiced price for the Products.

**(g) The Seller shall not be liable for any loss of profit or earnings, loss of time or loss of use of any vessel(s), machinery or equipment. In no circumstances shall the Seller be liable for any special or indirect loss or damage whatsoever.**

(h) The Seller shall not be liable for any infringement of a third party's intellectual property rights caused by the Buyer's use of the Products.

(i) Any exclusions or limitations of liability in these General Conditions or in the Contract shall be for the benefit of the Seller as well as all companies and/or individuals within the BRD Group. The Buyer agrees in the appointment of the Seller as its agent or trustee solely for the extension of the benefit of the exclusions and limitations of liability. All duties, liabilities and obligations which would otherwise result from this agency are expressly excluded.

## Limitation Period

(j) Seller's warranty for the Products as stated in Clause 8 above shall lapse after 12 months from the date of the first commissioning/use of the Product. Notwithstanding the foregoing, Buyer shall have no claim against the Seller, in contract or in tort, based on warranty or in relation to anything performed or delivered under the Contract (including claims for defective Products or services) unless the Seller has been notified in writing within 24 months from the date of delivery.

## 9. CHOICE OF LAW AND JURISDICTION

(a) The Contract shall be governed by and construed in accordance with the laws of Denmark excluding any provisions of law that would lead to the application of any law other than Danish law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to the Contract.

(b) In the event of any dispute or difference arising under or in connection with the Contract (including a dispute or difference as to the validity of the Contract), such dispute or difference shall be referred to and resolved according to the judgment of the Danish Maritime and Commercial Court in Copenhagen ("Sø- og handelsretten i København") and the parties submit to the exclusive jurisdiction of that court.

## 10. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the Seller and the Buyer concerning the supply of the Products. The Buyer agrees that he has no other rights or claims against the Seller other than those expressly stated in the Contract.