

GENERAL TERMS OF BUSINESS OF BUZIL-WERK WAGNER GMBH & CO. KG

§ 1 General:

1. BUZIL exclusively performs deliveries in accordance with the following terms of sale and delivery, which also apply to future deliveries without any further notification. As a rule, agreements on deviations are required to be made in written form and receive the consent of BUZIL. Any purchase conditions on the part of the customer are hereby expressly rejected. The customer shall also not oblige BUZIL even if BUZIL does not object again upon contractual conclusion and performs delivery to the customer without reservation.
2. All agreements made between BUZIL and the customer for the purpose of fulfilling this contract are set down in writing in these General Terms of Business or as a supplement in a contract.
3. All designs, samples and analysis data only provide non-binding information regarding the average condition of the good unless certain properties are guaranteed in writing in a specification. In the case of standardised products, the tolerances permitted within the standard apply.
4. Offers on the part of BUZIL are non-binding. BUZIL reserves the right to make technical changes as well as changes in terms of form, colour and/or weight. BUZIL is permitted to accept the contractual offer in the order within two weeks of receipt of the order. The receipt of the order is deemed to be the first workday following the dispatch of the order from the customer. Acceptance may only be declared in writing and by means of an order confirmation from BUZIL. If a confirmation of receipt of the order is to be given, this shall not constitute binding acceptance of the order.
5. BUZIL shall charge the customer a minimum quantity surcharge of €75.00 up to an order amount of €250.00 (net). Orders shall only be accepted in written form, by fax, by email, via the BUZIL web shop or by means of EDI. Changes to orders can be carried out on the day of receipt of the order until 12 o'clock (noon). If a change is made thereafter, the order shall be treated as a new order in terms of the delivery period and minimum order quantity. BUZIL reserves the right to issue the invoice for the agreed performance to the customer electronically by email.

§ 2 Prices:

1. As a rule, the price is calculated in accordance with the prices valid on the day of delivery, pursuant to the current BUZIL price list or for private label products according to the prices agreed in the contract, plus the statutory amount of VAT.
The prices of BUZIL are stated ex works. BUZIL reserves the right to agree individual transport costs.
Transport costs incurred by express delivery shall be borne by the customer.
If delivery is only possible using public transport, carriage-paid delivery shall only be made from a goods value of €1,500.00 delivered free for the recipient. Carriage at the place of receipt shall be borne by the recipient.
2. If, in the case of agreed prices, the charges on production, sale and transport such as customs duties, taxes and transportation charges are changed or re-constituted by the delivery date, BUZIL is permitted to alter the due purchase price accordingly.

§ 3 Delivery periods and delivery dates:

1. Circumstances which are unforeseeable or beyond the reasonable control of BUZIL and which impair the fulfilment of the obligations assumed by BUZIL shall permit BUZIL to postpone the delivery by the duration of the impairment or a suitable period thereafter or to withdraw from the contract on the basis of a not yet fulfilled part. The right of withdrawal shall not exist if the circumstances merely justify a short-term disruption to the delivery capability of BUZIL.
The aforementioned circumstances include strike action and lockouts which lead to a significant impairment of delivery for BUZIL, regardless of whether the aforementioned circumstances occur at BUZIL or at one of the suppliers. This does not apply if BUZIL is itself responsible for the performance hindrance.
2. Delivery periods or dates are non-binding unless they have been confirmed by BUZIL as binding in writing. If BUZIL does not adhere to agreed delivery periods, the customer undertakes to set BUZIL a suitable grace period for fulfilment. Following expiry of this period, the customer may withdraw from the contract. Should the customer withdraw from an issued order without justification, BUZIL may in any case assert an actually higher damage and claim 10% of the purchase price for the costs incurred in processing the order and for the loss of earnings. The customer is free to furnish evidence of a lower damage.

3. BUZIL shall be liable in accordance with statutory provisions insofar as default on delivery is due to a wilful or grossly negligent breach of the contract for which BUZIL is responsible. Culpability of the representatives or auxiliary agents of BUZIL shall be attributable to BUZIL insofar as they have acted with intent or gross negligence. In the event of default on delivery, BUZIL shall be liable for each complete week up to a maximum amount of 2% of the delivery value. Regardless of the duration of default, the liability is limited to at most 6% of the delivery value.

§ 4 Delivery quantity and partial delivery, delivery and transfer of risk:

1. Delivery quantities are stated on the basis of the packaging units indicated in the BUZIL price list or multiples thereof.
2. Partial deliveries are permissible insofar as they are customary, or they are necessary due to the quantity of the delivery object. In other respects, BUZIL is permitted to perform reasonable partial deliveries at any time. The place of fulfilment for all delivery obligations is the BUZIL production facility or the respective BUZIL branch in which the goods are handed over to the first carrier for transport to the customer.
3. BUZIL shall determine the type of dispatch, carrier and/or forwarder.
4. Deliveries are made at the risk of the customer. In the absence of a deviating agreement, the risk shall be transferred to the customer at the latest as soon as BUZIL has handed over the goods to the carrier, the forwarder or the person otherwise appointed responsible for executing the dispatch. The transfer of risk shall also take place in the case of transport by BUZIL itself, the transfer of other obligations to be performed at the place of delivery or transport costs incurred by BUZIL during handover. At the request and cost of the customer, BUZIL is obliged to conclude the insurance policies desired by the customer. In the event of self-collection or collection by a transport company commissioned by the customer, the risk shall be transferred to the customer upon the beginning of loading. In these cases, the customer alone is responsible for safe and secure loading, transport and unloading. Should BUZIL cooperate in this process, this shall be on behalf of and at the risk of the customer. The customer shall hold BUZIL free from claims asserted against BUZIL based on damage occurrences, including unsafe and insecure loading. In other respects, the customer shall hold BUZIL free from any disadvantages and/or encumbrances which may arise at BUZIL in the event that the carrier it appoints or instructs has violated the provisions of goods transport law. Should dispatch be delayed as a result of circumstances for which the customer is responsible, the risk shall be transferred to the customer upon receipt of notification of readiness for dispatch.

§ 5 Reservation of ownership:

1. BUZIL reserves ownership of the delivered goods until receipt of all payments arising from the business relationship with the customer. In the event of behaviour of the customer in violation of the contract, in particular for default on payment, BUZIL is permitted to take back the goods and the customer is obliged to return the goods. After recovering the goods, BUZIL is authorised to commercially realise the goods. The proceeds of such realisation, minus the actually incurred reasonable costs of realisation, shall be offset against the liabilities of the customer.
2. The customer is permitted to resell the goods in the ordinary course of business. However, the customer hereby assigns all claims in the amount of the purchase price agreed between itself and BUZIL (including VAT) to BUZIL, which arise for the customer based on the resale, regardless of whether the goods are resold with or without further processing (extended reservation of ownership). BUZIL hereby accepts this assignment. The customer shall also remain authorised to collect this claim even after its assignment. The authorisation of BUZIL to collect the claims itself remains unaffected. BUZIL undertakes not to collect the claims itself so long as the customer duly meets its payment obligations and does not enter default on payment. In the event of default on payment, BUZIL may demand that the customer discloses all information required for collection, hands over the associated documents and informs the debtors (third parties) of the assignment as well as the assigned claims.
3. The customer may neither pledge goods subject to the reservation of ownership of BUZIL nor assign them to others by way of security. In the event of pledges, seizures or other disposals by third parties, the customer must promptly inform BUZIL and provide all information and documents necessary to safeguard its rights. Enforcement officers or third parties must be informed of the ownership of BUZIL. At the request of the customer, BUZIL undertakes to release the securities to which BUZIL is entitled to such an extent as the value exceeds by more than 10% the claims to be secured, insofar as they are not yet paid. The selection of securities to be released is at the discretion of BUZIL.

4. The customer undertakes to handle with care the goods delivered by BUZIL for the duration of the reservation of ownership. For deliveries to countries with other legal systems in which the above provision on the reservation of ownership does not have the same security effect as in the Federal Republic of Germany, the customer shall make every effort to provide BUZIL with corresponding rights of security without undue delay. The customer will cooperate in all measures such as registration or publications etc., which are necessary and required for the effectiveness and enforceability of such rights of security.

§ 6 Liability:

1. For defects vis-à-vis the customer, BUZIL shall provide subsequent improvement or replacement at its own discretion. Section 439 (3) BGB (German Civil Code) remains unaffected. Should the subsequent improvement fail, the customer may generally demand a depreciation of remuneration (reduction) or reversal of the contract (withdrawal) at its discretion. However, in the event of only a marginal contract violation, in particular for marginal defects, the customer shall not have a right of withdrawal.
2. The goods must be promptly inspected upon delivery. Any complaints regarding defects must be promptly submitted in writing. Should the customer fail to submit such complaints, the goods shall be considered accepted as free of defects, except in the case of a hidden defect which was not recognisable during the incoming goods inspection. Even in this case, prompt submission of a written complaint is required, otherwise the goods shall be considered accepted as free of defects.
3. The customer has the full burden of proof for all claims, in particular for the defect itself, for the date of defect discovery and for the prompt complaint regarding defects. Samples of the defective goods as well as image material with respect to the complaint, where possible, must be attached to all complaints. Otherwise, it is not possible to process the complaint. Transport damages must be recorded directly upon delivery and confirmed by the deliverer.
4. Should the customer opt to withdraw from the contract based on a legal or material defect following failure of subsequent improvement, the customer shall not be entitled to any compensation on the basis of the defect. Should the customer opt to receive compensation following failure of subsequent improvement, the good shall remain with the customer. Compensation shall be limited to the difference between the purchase price and the value of the defective goods. This shall not apply if BUZIL has caused the contractual violation through gross negligence.
5. Defect claims shall lapse after one year from the date of the transfer of risk.
6. As a rule, only the product description of BUZIL shall be agreed as the agreed condition of the goods. Public statements, other texts or advertising shall not constitute a contractual specification of the condition of the goods.

§ 7 Liability limitations:

1. With respect to claims not conceded in these terms of business, in particular claims for compensation or the reimbursement of expenses on the part of the customer for any form of poor performance of contract as well as cases of tort, BUZIL shall not be liable for the slightly negligent violation of non-essential contractual obligations by the legal representatives of BUZIL or auxiliary agents.
2. In the case of other slightly negligent breaches of duty by BUZIL, legal representatives of BUZIL or auxiliary agents, the liability of BUZIL shall be limited to the foreseeable, contractually typical, direct average damage depending on the type of goods.
3. The above liability limitations do not concern the claims of the customer arising from product liability. Furthermore, they do not apply to bodily injuries or damage to health or the loss of life of the customer attributable to BUZIL.

§ 8 Information, advice and obligations:

1. Information and advice shall be provided based on the existing experience of BUZIL and according to the best of their knowledge. They are provided on a non-binding basis subject to the reservation of a deviating written agreement and cannot be used to establish any claims whatsoever against BUZIL.
2. The resale of BUZIL products is not permitted in countries in which national regulations are not observed by the labels, descriptions and product information on the packaging units of BUZIL. A BUZIL customer shall also be liable for such misconduct on the part of its buyers.
3. The export of products requires the written consent of BUZIL. The customer assumes responsibility for regulatory compliance in the use of products abroad.



4. BUZIL products are exclusively suitable for commercial consumers and marked on the label as such. For this reason, BUZIL products may not be sold in this form to private end consumers. The labelling obligations prescribed by law for sale to private end consumers are not fulfilled.

§ 9 Payment conditions:

1. BUZIL invoices are payable immediately following the invoice date without deduction.
2. Despite any deviating conditions of the customer, BUZIL is permitted to first offset payments against its older debts and to inform the customer about the nature of offsetting performed. If costs and interest rates have been incurred, BUZIL is permitted to first offset the payment against the costs, then the interest rates and finally the main claim.
3. Non-compliance with the payment period shall permit BUZIL to charge default interest in the currently applicable statutory amount above the respective base interest rate from the date of maturity, without requiring a separate warning. The customer is not permitted to offset this interest with counterclaims or to assert a right of retention unless the counter claim is undisputed or legally determined. Prior to complete payment of due invoice amounts, including default interest, BUZIL is not obliged to perform any further delivery for any ongoing contract.
4. In the event that insolvency proceedings are filed against the assets of the customer, BUZIL is permitted to immediately declare the total remaining debt as due, also if BUZIL has accepted cheques as a means of payment. In this case, BUZIL is also permitted to demand advance payments or securities. The customer may only exercise a right of retention if its counterclaim is based on the same contractual relationship.

§ 10 Place of fulfilment and jurisdiction:

1. The place of fulfilment for the performances of the customer and BUZIL performances is the registered address of BUZIL in Memmingen.
2. Insofar as the customer is a merchant in the meaning of the German Commercial Code (HGB) or an entrepreneur from a member state of the Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters (EuGVÜ or EuGVO), the jurisdiction is Memmingen. However, BUZIL is permitted to also file suit against the customer at its local court.
3. The law of the Federal Republic of Germany applies to these terms of business and all legal relations between BUZIL and the customer. The application of the UN Convention on the International Sale of Goods and conflict of law rules is excluded.

§ 11 Miscellaneous:

1. The assignment of rights and obligations of the customer arising from the contract concluded with BUZIL to a third party shall require the written consent of BUZIL.
2. Information pursuant to the Federal Data Protection Act: In connection with commercial transactions, personal data may also be stored at subsidiaries/branches of BUZIL and delivering agencies.
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