

### **I. General**

We sell and deliver exclusively according to the conditions below. They apply for the entire business relationship with our customers, unless anything to the contrary is explicitly agreed, and this applies even in the case of verbally concluded sales contracts. The customer accepts them as binding not only for the present contract, but also for all future transactions, and waives the right to enforce its own conditions of purchase. Any such conditions shall not become part of the contract, either due to our silence or our delivery, and instead would have to be confirmed in writing for each individual transaction, as is the case for any other differing agreements.

### **II. Quotation/conclusion of contract**

Our quotations are without obligation and non-binding, provided that they have not been explicitly labelled as binding or do not contain a specific term of acceptance. Our information on the subject of the delivery or service (e.g. weights, dimensions and technical data) as well as our depictions thereof, e.g. in the form of drawings and diagrams, are only approximate, unless use for the contractually intended purpose requires precise compliance. They are not guaranteed characteristics, but rather descriptions or designations of the delivery or service. Conventional discrepancies and discrepancies which are the result of legal regulations or which represent technical improvements, as well as the replacement of components with equivalent parts, are permitted provided that they do not impair the ability to use the delivery or service for the contractually stipulated purpose.

### **III. Prices**

The prices in our price lists are without obligation and do not represent a quotation. Agreed prices are non-binding for repeat orders. They are based on the level of wages and costs at the time of concluding the contract. If changes arise by the time of delivery, then we shall be entitled to adjust our prices accordingly. If this price increase amounts to more than ten per cent of the agreed price, then the customer shall be entitled to withdraw from the contract. For services, the individually prepared quotation, which is usually provided based on flat rate costs or on an hourly basis, is authoritative. The customer/purchaser must check and countersign the timesheets and records of expenses presented by the relevant service technician. If the customer/purchaser is absent, then the timesheets/records of expenses shall be deemed to have been approved if no objection to their content is raised within three working days of receipt. All prices are understood to be ex works or ex warehouse and plus the statutory value-added tax. Deliveries are made to the customer in return for payment of the freight and packaging costs, unless self-collection is agreed. Special types of dispatch (parcel, express delivery, airmail) shall only be used at the customer's request, and shall also be charged for separately.

### **IV. Payment conditions**

Unless agreed otherwise, all invoices must be paid net cash within 30 days of the invoice date or notification of readiness for dispatch. If payment is received within one week then a two per cent discount will be granted. If the invoice states dates for the receipt of payment, then these are authoritative for the discount and the net due date. Discounts are not permitted in the amount of sums for which there are receivables, the due dates of which have been exceeded, at the time of payment. If the due date is exceeded then interest amounting to eight percentage points p.a. above the relevant bank rate of the German Bundesbank must be paid. Cheques and bills of exchange (the latter only following prior agreement) shall only be accepted as payment if the discount charges and bank fees are paid. No guarantee is provided for collection or protest being carried out in good time. Circumstances which affect the customer's creditworthiness or represent a significant deterioration in its financial circumstances (e.g. non-payment of cheques or bills of exchange as well as non-payment of due receivables for goods already delivered), entitle us to make all invoices for goods already delivered due for payment and only to make outstanding deliveries gradually in return for payment. In addition, we are entitled to revoke the right to resale of goods delivered subject to reservation of title for debt collection. A right of retention for the customer is excluded unless it is based on the same legal relationship. Offsetting by the customer is only permitted if the counterclaim is undisputed and has been legally established.

### **V. Reservation of title**

The delivered goods remain our property until complete payment of all receivables resulting from the business relationship. The customer is entitled to resell goods subject to reservation of title in normal trading, namely for cash payment or subject to reservation of title; the customer is not entitled to other forms of disposal, in particular assignment as security or pledging. The customer already assigns its receivables from the resale of goods subject to reservation of title (including the relevant receivables from bills of exchange) and all ancillary rights to us. We accept this assignment. If the customer sells the goods subject to reservation of title with other goods, which were not from us, for one total price, then the assignment shall only be in the amount we charged for the goods subject to reservation of title included in the sale. If the customer's receivables resulting from the resale are collected in a current account, then the customer hereby also already assigns its receivables from the current account against its customers to us. The assignment is carried out in the amount we charged for the resold goods subject to reservation of title.

In the event of payment default by the customer or deterioration of the financial circumstances/creditworthiness as per point 3, without prejudice to the exercising of further rights, we are entitled to demand surrendering of goods subject to reservation of title for the purposes of safekeeping; this is not a withdrawal from the sales contract. The customer must grant us access to the goods subject to reservation of title still in its possession. For the surrendering, the customer must store the goods subject to reservation of title separately from its other goods and must label them as being subject to the seller's reservation of title. The seller is entitled to sell the goods by private contract after previously setting a deadline for payment; a credit note shall be issued for the goods subject to reservation of title for the proceeds obtained minus the sale costs. If the value of the collateral exceeds the level of our receivables by 20 per cent or more, then at the customer's request we will release the securities at our discretion. The customer must inform us about access by third parties to the goods subject to reservation of title or to receivables assigned to us, in particular due to enforcement measures, and support us in any way with the intervention at its own expense.

### **VI. Delivery date**

Delivery dates mentioned in quotations are without obligation. The delivery date stated in the order confirmation applies from the day of complete clarification of the order. We do not provide a guarantee for compliance with a delivery date, unless it is expressly marked as a "fixed date" in writing. An agreed delivery date shall be extended appropriately in the event of force majeure and other unforeseen events such as riot, war, blockade, strike and lack of delivery by our supplier or disruptions to operations. The customer may only claim compensation due to default or non-fulfilment if there is proof of gross negligence or intent on our part. The customer is obliged to provide all information and documents necessary for export, shipment and/or import.

### **VII. Transfer of risk**

Risk transfers to the customer, even if delivery carriage paid has been agreed, as soon as the goods leave the warehouse or, in the event of self-collection, as soon as notification is given that goods are ready for dispatch or collection. This applies even if the place of shipment is not the place of performance. All shipments and any returns shall be transported at the customer's risk. We only insure the shipment against theft, breakage, transport/fire/water damage or other insurable risks if expressly requested by the customer and at the customer's expense.

### **VIII. Warranty**

In principle the statutory warranty provisions apply, unless stipulated otherwise below. The delivered objects must be thoroughly inspected by the customer, or a third party appointed by the customer, immediately after delivery. The customer may not refuse to accept deliveries due to insignificant defects. The delivery shall be deemed to be accepted according to the contract if we do not receive a written complaint concerning obvious

defects, or other defects which would be noticeable during an immediate thorough inspection, within seven working days of delivery of the goods, or otherwise within seven working days of discovering the defect or the time at which the defect was noticeable for the customer during normal use of the goods without more detailed inspection. At our request, the goods complained about must be returned to us carriage paid. In the event of justified complaints, we reimburse the costs for the cheapest shipment method; this does not apply if the costs increase because the goods were in a location other than the place of performance.

If there are material defects in the delivered goods, at our discretion we are initially entitled to subsequent improvement done twice, or to replacement delivery. If the subsequent performance fails, then at its discretion the customer is entitled to request withdrawal or reduction. If a defect is our fault, then the customer may only demand compensation subject to the requirements specified in point IX. of these terms and conditions.

Delivery of used items agreed in an individual case is carried out to the exclusion of any warranty.

Rights of recourse for the customer against us as per section 478 BGB only exist if the customer has not made any agreements with its buyers which go beyond the statutory claims for defects.

The limitation period for defect claims is twelve months after transfer of risk.

## IX. Compensation

Compensation claims by the customer, for whatever legal reason, in particular due to positive breach of contract, fault on conclusion of the contract, unpermitted actions or defective or incorrect delivery, are excluded unless there is a mandatory requirement for liability.

Existing compensation claims are limited to the foreseeable losses typical for the contract.

Indirect losses and subsequent losses due to defects in the goods are only liable for compensation if such losses can typically be expected in the event of intended use of the goods. Restrictions to our liability do not apply due to intentional or grossly negligent actions, for guaranteed characteristics, due to injury to life, limb or health, or according to the Produkthaftungsgesetz [Product Liability Act]. The present regulations do not involve a change to the burden of proof to the customer's disadvantage. If our liability for compensation is excluded or restricted, this also applies in relation to the personal liability for compensation of our personnel, employees, workers, representatives and assistants.

## X. Industrial property rights, copyright

We guarantee that the goods are free of industrial property rights or copyrights of third parties in the Federal Republic of Germany.

If our goods infringe an industrial property right or copyright of a third party, then at our discretion and our expense we shall amend or replace the goods so that third party rights are no longer infringed, or alternatively obtain a right of use. If we are unable to do this under reasonable conditions or within a reasonable period, then the customer is entitled to withdraw from the contract or to reduce the purchase price accordingly. Point IX of these terms and conditions applies for any possible compensation claims.

The obligations above only apply to us if the customer immediately informs us in writing about claims made by third parties, has not acknowledged an infringement and all defence measures and settlement negotiations are left to us.

Claims by the customer are excluded if he is responsible for the infringement of industrial property rights. They are also excluded if the industrial property right infringement is caused by the customer's special requirements, by an application which we could not have foreseen or due to the product being changed by the customer or used together with other products not supplied by us

## XI. Return

The return of contractually supplied goods is excluded unless agreed otherwise in writing. In a case such as this, we are entitled to make the return conditional on payment of a processing fee amounting to 20% of the value of goods, and reimbursement of transport and packaging costs. If the returned goods are defective and/or can no longer be resold then there is no entitlement to a credit note; we reserve the right to claim for expenses. In the event of a contractually agreed proper return, we will issue a credit note; there is no entitlement to payment.

## XII. Advice

The customer acknowledges that we save data from the contractual relationship as per section 28 Bundesdatenschutzgesetz [Federal Data Protection Act] for the purposes of data processing and we reserve the right to transmit the data to third parties (e.g. insurance companies) if necessary to fulfil the contract.

## XIII. Disposal

The customer commits to properly dispose of supplied lighting products after the end of use at its own expense according to the guidelines of the Elektro- und Elektronikgerätegesetz [ElektroG – Electrical and Electronic Equipment Act]. This releases us from the obligations as per section 10(2) ElektroG and therefore from related claims of third parties. If the customer fails to contractually oblige third parties, to whom it provides our abovementioned lighting products, to take on the obligation for disposal and to pass on this obligation, then the customer is obliged to take back the supplied goods after the end of use at its expense and dispose of them properly according to statutory regulations.

Our entitlement to lawful disposal being carried out by the customer does not end until two years after the final end of use of the lighting products supplied to the customer. The two-year period for the suspension of the limitation period begins no earlier than on receipt of written notification of the end of use from the customer.

## XIV. Place of performance, place of jurisdiction

Unless stated otherwise in the order confirmation, our registered office is the place of performance. Depending on the jurisdiction over the subject in dispute, the place of jurisdiction is Wipperfürth Local Court or Cologne District Court; however, we are also entitled to sue the customer in the court with jurisdiction for its registered office. The law of the Federal Republic of Germany applies; the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.

## XV. Final provisions

If the contract or these general terms and conditions contain loopholes or individual points are or become ineffective, this shall not render the entire contract or the general terms and conditions ineffective. Instead, the parties shall replace the ineffective regulations or the relevant loopholes with new effective agreements, or shall close the loopholes to the effect which corresponds to the sense and economic interest of the ineffective or incomplete regulation.

*General terms and conditions B.E.G. Brück Electronic GmbH as of January 2015*