

BORMANN GENERAL TERMS AND CONDITIONS FOR SALE AND DELIVERY:

For all offers, business transactions and deliveries of Bormann GmbH, Neusäß (hereinafter „BORMANN“) exclusively BORMANN GENERAL TERMS AND CONDITIONS FOR SALE AND DELIVERY apply. General Terms and Conditions of the customer only apply insofar as BORMANN has approved them explicitly in written form.

1. Conclusion of Contract.

Offers which are submitted by BORMANN, only conduce to the commencement of negotiations and are not binding, unless they are declared as binding in written form. The order by the customer is an offer for the conclusion of a contract, which binds the customer for a period of 10 days starting with BORMANN's receipt of the order.

2. Prices, Payment

2.1. All prices are quoted ex works at the headquarters of BORMANN (Lohwaldstr. 53, D-86356 Neusäß, Germany) exclusive of packing and transport, plus Value Added Tax (= Umsatzsteuer, Mehrwertsteuer) in its rate legally applicable at that time and other additional costs incurred.

2.2. The invoice amounts are due immediately after receipt of the invoice without any deduction.

2.3. The customer is only entitled to a set-off, if the counter claim of the customer is undisputed or finally legally established.

3. Retention of title

3.1. All goods delivered (Retained Goods) remain the property of BORMANN until all entitlements due to BORMANN arising from business relations with the customer have been met in full. Prior to this the customer is especially barred from pledging or transfer by way of security of the goods delivered. Any treating or processing of the Retained Goods is conducted for BORMANN, who is deemed to be the manufacturer and who gains ownership of the newly resulting goods which are also deemed to be Retained Goods. The customer gains an expectant right in these newly resulting goods. On any jointing, processing or admixing of the Retained Goods with other goods not owned by BORMANN, BORMANN in any event is entitled to co-ownership of the new product in the ratio resulting from the ratio of the worth of the jointed or admixed Retained Goods to the worth of the other goods at the time of jointing or admixing. New products are insofar deemed to be Retained Goods on a pro-rata basis.

3.2. The customer will, at his own expense, store the Retained Goods with care and insure them as far as it is common and typical against fire, water, theft and liability hazards. The customer already now assigns all claims arising from these insurance contracts to BORMANN. BORMANN herewith accepts this assignment.

3.3. The customer is entitled to the resale of Retained Goods in the proper course of business. The customer already now in advance for every single case assigns for security all his future claims resulting from any resale of Retained Goods to BORMANN until the complete fulfilment of BORMANN's claims set out in 3.1. BORMANN accepts this assignment. BORMANN revocable authorizes the customer to collect the claims assigned to BORMANN for account of BORMANN in the customer's own name. This authorization for collection of claims can only be revoked if the customer does not fulfil properly his duties stipulated in this section 3. or falls in default of payment. At the request of the customer BORMANN will free securities, as far as their marketable worth exceeds 110 % of the unsettled claims mentioned in 3.1. BORMANN hereby can choose which securities are freed.

3.4. If a customer of the customer wants to rule out the assignment in advance of claims stipulated in 3.2, the customer will try to counter this intention. If the assignment remains barred, then the customer will obtain the approval of BORMANN concerning the delivery. The customer will inform BORMANN about his participation in old-line-factoring.

3.5. In the event of any attempt of any third party to take hold of the Retained Goods or of the claims resulted from the resale the customer is obliged to indicate the retention of title to this third party and to notify BORMANN of any encroachment of his rights by any third party without any delay and to provide to BORMANN all necessary information. The customer grants to BORMANN the right to enter the business premises of the customer as far as this is necessary for the realization of the securities. Upon request of BORMANN, the customer without delay will provide copies of all unsettled invoices concerning the resale of BORMANN-goods and name the addresses for service of the writ of summons and receiving facsimile numbers of the invoice recipients.

4. Terms of delivery

BORMANN specifies the delivery time according to the statements of his providers.

4.1. If the failure to comply with delivery time limits or performance time limits due to act of God, for example but not exclusively mobilization, war, turmoil, terrorism, natural disaster or to similar events which cannot be influenced by BORMANN as strike, lockout, official directive etc., then these time limits are extended adequately. The same applies in the event BORMANN himself is not supplied in time or not supplied correctly. If the obstruction lasts longer than three months, then after stipulation of an adequate period of grace the customer is entitled to withdraw from the contract regarding the part of the contract not yet fulfilled.

4.2. BORMANN is entitled to part-deliveries and part-performances to reasonable extent.

4.3. In any case the customer is obliged to check, test and verify if the goods delivered and any samples or other preliminary products are as specified in the contract. The customer bears the risk of possible faults in the artwork master because of the declaration of the customer of readiness for press, as far as faults are not originating from the process of production - or could not only be perceived - following the declaration of the customer of readiness for press. The same applies for all other declarations of approval by the customer concerning the further production.

4.4. In the event of legitimate complaints about defects by the customer BORMANN will at his own option repair or replace goods free of charge. If efforts to remedy the defect are finally unsuccessful even within a reasonable period of grace set by the customer in writing after an adequate number of attempts to remedy the defect by BORMANN, then the customer is entitled to exercise his legal warranty rights. If subject of the order is job processing work or processing of print products, then BORMANN is not liable for any impairment of the product to be processed, if a damage is not caused intentionally or grossly negligently.

4.5. The customer cannot find fault with minor divergences of coloured reproductions compared to the original. The same applies for divergences between proofs and production print.

4.6. Differences of up to 0,5 % of the size of sheets are tolerable. BORMANN cannot be held responsible for differences resulting from alteration of the material after delivery due to climatic impacts in the store rooms or workrooms of the customer.

4.7. For divergences of the consistence of the employed material BORMANN is only liable limited to the amount of BORMANN's own claims against the respective supplier of BORMANN. In any such case BORMANN is freed from his liability if BORMANN assigns his claims against his supplier to the customer. BORMANN is liable like a guarantor as far as claims against the supplier do not exist or are not enforceable due to intent or negligence of BORMANN.

4.8. The customer cannot find fault with over-deliveries or short deliveries up to 15 % of the ordered print run. The delivered quantity is billed. For deliveries from specially designed paper of less than 1.000 kg this percentage is increased to 25 %, of less than 2.000 kg to 20 %.

4.9. The shipment is carried out for account of the customer; BORMANN does not assume an obligation to select the cheapest shipments.

4.10. BORMANN generally does not accept the return of deliveries because of erroneous orders of the customer.

5. Passing of the risk

The risk passes to the customer, when the shipment is handed over to the person conducting the transport or has left the warehouse of BORMANN or of the supplier appointed by BORMANN for the purpose of shipment. In case the shipment is impossible without resulting from intent or negligence of BORMANN or is delayed for reasons for which the customer is responsible, the risk passes to the customer with the announcement of the readiness for shipment.

6. Warranty

BORMANN assumes warranty for goods delivered by BORMANN only to the extent of warranty granted by the manufacturer.

6.1. Rights to effect cure become statute-barred within 12 months of the transfer of risks. The same applies for withdrawal and reduction of price. This time limit is not applicable if and to the extent to which the law according to sections 438 subsection 1 no. 2 and 634a subsection 1 no. 2

BGB stipulates longer time limits and in the event of intent, of fraudulent concealment of defects and of failure to comply with a guarantee of quality. The legal stipulations about suspension of expiry, suspension and recommencement of the limitation period remain unaltered by this stipulation.

6.2. Exclusion of warranty for second-hand goods. In the event that goods delivered by BORMANN according to the agreement are not newly produced but delivered as second-hand goods and that the customer either had the opportunity to check the goods before the handing over or did not reprehend the goods as defective within a period allowed for examination and sending notice of a defect of two weeks after handing over of the goods, then BORMANN does not assume any warranty for the goods except for damages which result from an at least grossly negligent breach of duty by BORMANN or by a legal representative of BORMANN or by a person whom he used to perform his obligation or in case of damage from the injury to life, body or health due to at least negligent breach of duty by BORMANN or by a legal representative of BORMANN or by a person whom he used to perform his obligation, and except for the cases of section 444 BGB.

6.3. Customer's obligation to check and reprehend. The customer must check all goods delivered by BORMANN without undue delay and with adequate methods. This does also apply for all single goods of the same kind of a greater delivery. In this event the period of time for checking is extended adequately. The customer's obligation to check all delivered goods also persists in the event that outturn samples have been sent to the customer. Provided that the type and quality of a product delivered by BORMANN allows a test run, then the customer is obliged to conduct a test run within an adequate period of time, at the latest within a week, after receiving the product.

6.4. Exclusion of reprehension of defects. The customer is obliged to reprehend defects in written form and without undue delay. The same also applies for damages or losses in transit provided that BORMANN was responsible for the transport. In the event the customer does not conduct the checking accordingly to 6.3., or conducts the checking later than owed according to 6.3., then the reprehension of any defect which the customer could have detected by checking in conformity with his duties and in good time is excluded. For every defect, which the customer detects but does not reprehend without undue delay after its detection, the reprehension of this defect is excluded. After accomplishment of an acceptance or of a test run the reprehension of defects, which were detectable the way the checking was conducted, is excluded.

6.5. The customer is obliged to hold defective delivered goods ready in their defective condition for the inspection by BORMANN for an adequate period of time. Any breach of this duty excludes any warranty claim of the customer against BORMANN.

6.6. Defects of a part of the delivery cannot lead to the objection of the whole delivery.

6.7. In case of warranty BORMANN will, at his choice, remedy the defect or supply a product free of defects free of charge.

6.8. For the suitability of the adhesive labels of BORMANN for the use intended by the customer BORMANN does not assume any warranty, since the reaction of self-adhesive gumming cannot be anticipated in every case. Therefore in every case it is necessary that the customer conducts his own adherence tests on the original material. BORMANN rejects every liability for any damages, losses or subsequent damages.

6.9. Place of cure, cost of cure. As far as BORMANN is obliged to effect cure, BORMANN will render this cure at the place of performance stipulated by the contract between BORMANN and the customer. If a place of performance has not been agreed upon between BORMANN and the customer, then BORMANN will render the cure at his headquarters (Lohwaldstr. 53, D-86356 Neusäß, Germany). The customer himself bears the cost for a possibly necessary dismounting of the BORMANN-product, for a transport to the place of cure and a possibly necessary re-assembly, as far as BORMANN has not caused these costs intentionally or grossly negligent.

6.10. If the remedy of defects by BORMANN is finally unsuccessful even within a reasonable period of grace set by the customer in writing after an adequate number of attempts to remedy the defect by BORMANN, then the customer is entitled to exercise his legal warranty rights.

6.11. The warranty is not applicable, if the delivered product is altered, or is installed, maintained, repaired or used improperly. This does not apply, if the customer proves that these circumstances are not causal for the defect reprehended.

6.12. If the verification of a notice of defect indicates that a warranty case is not existent, then the cost of the verification and repair will be charged by BORMANN with the hourly rates applicable at that time.

7. Imprint

BORMANN is entitled to show his trade name and possible trade marks on any delivered product in an adequate way. The customer can deny his consent, if he has a predominant interest to do so.

8. Title, copyright

8.1. The items, especially films, printing blocks, lithography, printing plates and connection diagrams used in the production of the contractual product remain in the ownership of BORMANN and are not delivered, even if they are charged separately.

8.2. The conducting of the order takes place following the specifications of the customer. Therefore the customer is solely liable, if by the conducting of his order rights, especially copyrights of any third party are infringed. The customer has to indemnify BORMANN from all claims resulting from such infringement of rights of any third party.

8.3. The copyright and all rights of use, especially the right to copy with any method and for any purpose of use to BORMANN's drawings, drafts, masters, originals, films and the like remain with BORMANN, except as explicitly otherwise stipulated. Reprint or copy – regardless of the method – also of those deliveries which are not subject to a copyright or to any other property right are not permitted without written consent of BORMANN.

9. Delivery of software

For the delivery of software complementary to these “BORMANN General Terms and Conditions for Sale and Delivery” the “BORMANN License Agreement Conditions” apply. In case of conflicting stipulations the latter precede these “BORMANN GTC for Sale and Delivery” for the delivery of software.

10. Limitation of liability, exclusion of liability

10.1. The liability of BORMANN – on whatever legal basis including tort – is excluded for lightly negligent breaches of duty, unless damages of life, limb or health or guarantee or claims according to the German Product Liability Statute (or similar compulsory statutes of other countries as far as applicable) are concerned. Also the liability for the breach of duties whose fulfilment is necessary to allow the duly performance of the contract and on whose compliance the customer can regularly rely remains hereby unaffected. The same applies for any breaches of duty by any auxiliary persons of BORMANN.

10.2. BORMANN shall only be liable for the loss of data which is unavoidable if the customer has met his data backup responsibilities at adequate intervals, e.g. once per day. In this case, BORMANN shall be liable only for typically foreseeable damage. Liability due to the absence of characteristics stipulated by contract or due to the violation of the contract due to intent or gross negligence shall remain unaffected.

11. Miscellaneous, lump-sum claim for damage

11.1. If the customer revokes the contract without the right to do so, then BORMANN can demand 20 % of the contract amount (upon proof of higher costs, the costs incurred) as lump-sum claim for damage instead of the execution of the contract. The customer has the possibility to prove that no or a lesser damage has occurred.

11.2. In case of ineffectiveness of single provisions of the contract the other provisions will stay effective. This does not apply, if then to uphold the whole contract would constitute an unreasonable hardship for one party.

12. Data Protection

12.1 BORMANN uses personal data for the purpose of establishing and maintaining the contractual relationship. BORMANN guarantees compliance with the applicable data protection regulations. See current data protection version on www.bormann.de.

12.2 As soon as BORMANN receives personal data that can be assigned to a specific or identifiable person, only the transferring person is responsible for the person having consented to this processing of his data or obtaining a legal permit.

13. Place of jurisdiction, applicable law

In the event the customer is Kaufmann (according to section 1 HGB) the place of jurisdiction for all disputes arising from or in relation to the contract is exclusively the headquarters of BORMANN in Neusäß, Germany. In any event the law of the Federal Republic of Germany excluding UN-CISG shall apply exclusively.