

**General purchasing and delivery conditions (General terms and conditions)
of 2B FermControl GmbH, Breisach am Rhein**

Last updated: April 2019

1. Scope of application

- 1.1 These general purchasing and delivery conditions of 2B FermControl GmbH (hereinafter also referred to as “we”) apply to all business relationships with the company (section 14 German Civil Code (BGB), legal entities under public law, or a federal special fund under public law (hereinafter referred to as: “customer”).
- 1.2 Deviating or supplementary terms from the customer become a part of the contract only if and to the extent to which we have expressly consented to their application.

2. Offers and conclusion of a contract

- 2.1 Unless expressly indicated otherwise, our offers are subject to change and non-binding. An order for goods by the customer is considered to be a binding contractual offer. Acceptance can be declared either in writing (e.g. through an order confirmation) or through delivery of the goods to the customer.
- 2.2 The customer may not transfer his contractual rights to third parties without our express consent.
- 2.3 We reserve the right to make changes to information in an offer or any other contractual document regarding the details of the delivery or service (e.g. dimensions, weight and performance specifications), provided the scope of delivery or services is not significantly altered as a result, or its quality is improved and the changes or deviations are reasonable for the customer.

- 2.4 We reserve the right of ownership and copyright on all documents which we submitted and provided to the customer (e.g. cost estimates, drawings, plans, data, resources). They may not be made accessible to third parties or duplicated or used for advertising purposes without our express consent. These documents are to be returned upon our request. Any copies made are to be destroyed if they are no longer needed by the customer in the course of regular business activities or if negotiations do not lead to the conclusion of a contract. An exception to this is the storage of data provided in electronic form for purposes of regular data backup.

3. Prices and payment terms

- 3.1 Unless agreed on otherwise, our prices are ex-works (EXW, Incoterms® 2010) plus statutory VAT, packaging, freight insurance; in the case of export deliveries, plus customs as well as fees and other public charges.
- 3.2 Invoice amounts are, unless stated otherwise on the order confirmation or invoice, due without any deductions upon delivery or after acceptance in the case of service contracts. The customer is in default 30 calendar days after delivery and invoicing, without the necessity of a reminder. Independent of other claims for compensation, we are entitled to defer our own contractual obligations until the overdue payments have been made, in the case of arrears of payment for which we are not responsible.
- 3.3 If the customer falls behind on payment, all invoices for services rendered until then by us are due within fourteen days. In this case, we are entitled to demand prepayment or security for future services. Section 321 BGB shall remain otherwise unaffected.
- 3.4 The offsetting with counterclaims of the customer or the withholding of payments because of such claims is permissible only if the counterclaims are undisputed or have been legally upheld or are reciprocal to our claims.

4. Delivery and default

- 4.1 Delivery is made, unless noted otherwise, "EXW Breisach am Rhein", which is also the place of performance (no. 10.1), according to Incoterms ® 2010. The goods will be sent to another destination (shipment of goods purchased) at the customer's request and expense. If other delivery terms were agreed on, these are also always based on Incoterms ® 2010.

- 4.2 Unless expressly stated in writing as being binding, information regarding delivery times is non-binding. If shipment was agreed upon at the customer's request and expense (shipment of goods purchased), the delivery times and delivery dates refer to the time of transfer to the shipper, carrier or the third party otherwise commissioned with transport.
- 4.3 For deliveries which, at the customer's request, are to be made later than the delivery dates agreed on following conclusion of the contract, payment is to be made as if the delivery had been made in due time.
- 4.4 Partial deliveries are permissible if the partial delivery is usable for the customer within the scope of the contractual purpose, the delivery of the remaining goods ordered is assured, and the customer does not accrue any significant additional expenditures or additional costs as a result.
- 4.5 If the customer is obligated to accept the goods, this must take place promptly on the acceptance date agreed on, alternatively within one week following our notice of readiness for acceptance. The customer may not refuse acceptance on the grounds of a non-significant defect.
- 4.6 If the customer is in default of acceptance or culpably violates other obligations to cooperate, we are entitled to withdraw from the contract and/or claim lump-sum damages due to non-fulfillment in the amount of 1% for each complete week of the default, however no more than 5% of the contract amount. Both contract parties are entitled to prove that the actual loss is higher or lower.
- 4.7 We do not take responsibility for the impossibility of deliverance or delay in delivery, so long as this is caused by force majeure (e.g. natural catastrophes, war, unrest) or other events which were unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of any type, transport delays, strikes, lawful lockouts, shortage of labor, energy or raw materials, difficulties obtaining necessary permits from the authorities, official measures or in the event of unfulfilled, incorrect or untimely delivery by our suppliers) and for which we are not responsible. If such events make the delivery or service much more difficult or impossible for us and it is not foreseeable that we will be able to render our service within a reasonable period – at the latest within 2 months – we are entitled to withdraw from the contract. In the case of impediments which are temporary in nature, the delivery or service terms will be extended or the delivery and service deadlines will be postponed by the period of the impediment, plus an appropriate run-in period.

5. Guarantee

- 5.1 If our deliveries or services prove to be defective, we are obliged to correct the deficiencies at our option, by correcting the deficiency or making a replacement delivery. We will cover expenditures required for the purposes of supplementary performance, in particular transport, labor and material costs; this does not apply if the costs increase because the delivered goods are at a different location than that of the intended use.
- 5.2 We are entitled to make the supplementary performance owed conditional upon the customer paying the purchase price due. However, the customer is entitled to retain a portion of the purchase price appropriate in relation to the defect.
- 5.3 If the defect is caused by a defective product supplied by a third party, we are entitled to assign to the customer our warranty claims against the preliminary supplier. In this case, a claim can be made against us only if the legal enforcement of the above-mentioned claims against the supplier or manufacturer of the defective product supplied by a third party was unsuccessful or, for example, is futile due to insolvency.
- 5.4 The warranty becomes invalid if the customer, without our consent, modifies the delivered goods or has the delivered goods modified by a third party and the remedying of the defect is made impossible or unreasonably harder because of this. In each case the customer must bear the additional costs of remedying defects caused by the modification.

6. Liability, limitation

- 6.1 We shall be liable in accordance with the statutory provisions for any breach, for which we are responsible, of major contractual obligations whose fulfillment gives the contract its character and which is vital for the proper performance of the contract. We shall be liable for any other breaches of duty only if damage has been caused intentionally or grossly negligently by one of our statutory representatives, an employee, or by any other vicarious agents.
- 6.2 Provided that we are not guilty of having acted intentionally, we are liable only for the foreseeable damage which typically occurs.

- 6.3 Liability according to the Product Liability Act remains unaffected; this also applies to liability due to culpable injury to life, limb, or health. Upon acceptance of a guarantee, we are liable in accordance with the statutory provisions.
- 6.4 Unless otherwise agreed above, claims for compensation for damages against us are excluded.
- 6.5 If our liability is excluded and limited, this shall also apply to personal liability on the part of our legal representatives, employees, and other vicarious agents.
- 6.6 Claims for compensation for damages according to the aforementioned nos. 6.1 to 6.2 expire within the statutory period. The statute of limitations for claims for defects according to section 438(1)(3) BGB – except in the case of fraudulent intent and subject to no. 6.7 –
- is 24 months in the case of goods which, in line with their customary use, were used for a building and which caused its defectiveness,
 - 12 months for all other goods
- and starts from the delivery or, if acceptance is required, from the acceptance.
- 6.7 A claim for damages due to breach of duty for supplementary performance according to section 437(1), section 439 BGB shall apply only if, during the 12-month statute of limitations according to no. 6.5 (i), the customer requests the supplementary performance and also (ii) we have violated our obligation for supplementary performance.

7. Information and technical advice

Our information and recommendations are provided on a non-binding basis and exclude any liability, unless we have committed expressly and in writing to the issuance of information and recommendations. The customer is responsible for investigating – by performing his own testing – whether a product is also suitable for the customer's specific applications. Our information also does not represent a quality claim with regard to our products.

8. Reservation of title

- 8.1 We shall retain title to goods delivered by us until all of the claims arising out of the business relationship with the customer and to which we are entitled have been satisfied in full (current account reservation).
- 8.2 The customer is obligated, at his own expense, to carefully store any goods delivered under reservation of title and to keep them in good working order, repair and insure them against fire, water damage, burglary or theft.
- 8.3 The customer is to promptly inform us in writing in the case of seizure or other third-party access to the reserved property.
- 8.4 The customer is entitled to sell the reserved goods within the ordinary course of business, provided he is not in default of payment. Pledging reserved goods or assigning them as security is not permitted. The customer assigns to us at this time and in full, by way of security – in the case of co-ownership of the reserved goods, proportionately according to the co-ownership share – the accounts receivable with respect to the reserved goods which arise from resale or any other legal grounds (in particular, transfer of ownership to the end customer, insurance claim, prohibited action). The assignment is accepted by us. We hereby authorize the customer revocably to collect claims assigned to us for his own account and in his own name. If the customer acts contrary to the terms of the contract – in particular if he is in default with payment of a claim for payment – we are entitled to require him to disclose the assignment and to submit to us the information and documents necessary to collect the account receivable.
- 8.5 In the event of any breaches of any obligation by the customer, especially in the event of default of payment, we are entitled to take back the reserved goods at the customer's expense after having set a reasonable deadline.
- 8.6 If the reserved goods are combined with other goods, the reservation of title shall continue in respect of the newly created goods. As a result, we acquire co-ownership in the proportion that the value of the reserved goods (invoice value) has to the value of the new goods. If one of the combined goods is to be considered to be the main article, the customer shall transfer the joint title to us in the proportion that the value of the goods supplied by us (invoice value) has to the value of the new goods.

8.7 The customer shall hold the new goods with regard to our co-ownership share free of charge. If the reserved goods are resold as an integral part of the new goods, the assignment in advance agreed in Clause 8.3 shall apply only in the amount of the invoice value of the reserved goods.

8.8 If the law of the country in which the delivered goods are located does not permit any or only a limited reservation of title, we reserve the right to retain other rights to the delivered goods. The customer is obligated to participate in all necessary measures (e.g. registration) in order to implement the reservation of title or other rights instead of the reservation of title and to protect these rights.

9. **Data storage**

The customer agrees and acknowledges that all data about him from the business relationship, including personal data as defined by the Federal Data Protection Act, will be stored within the scope of our electronic data processing.

10. **Place of performance, governing law, place of jurisdiction**

10.1 The place of performance for all obligations by us and the customer is our headquarters, unless defined otherwise.

10.2 German law applies, with the exclusion of UN purchasing law (CISG).

10.3 Freiburg im Breisgau is agreed on as the exclusive place of jurisdiction. Moreover, we are entitled to assert our claims at the customer's place of general jurisdiction.