

# GENERAL TERMS AND CONDITIONS OF SALE

## 1. SCOPE OF APPLICATION, PURPOSE

- 1.1** These General Terms and Conditions of Sale (hereinafter the "**General Terms and Conditions of Sale**") govern the contractual relationship between Befesa Salzschlacke GmbH (hereinafter "**Befesa**") and the customer (hereinafter the "**Purchaser**") with regard to all sales of goods and deliveries. Any withstanding, amending or deviating terms and conditions of the Purchaser shall not apply, unless Befesa has, in individual cases, expressly and in writing acknowledged their applicability in lieu of these General Terms and Conditions of Sale.
- 1.2** These General Terms and Conditions of Sale shall also apply to all future transactions between the parties, even if no explicit reference has been made to their applicability in the individual case.
- 1.3** Individual agreements concluded between the parties shall have priority over these General Terms and Conditions of Sale. Oral agreements will have to be confirmed in text format (e-mail suffices).
- 1.4** Befesa hereby reserves the right to amend these General Terms and Conditions of Sale subject to prior written notification of the Purchaser. In case the amendment affects already concluded contracts, the Purchaser is entitled to object to the change and Befesa will inform the Purchaser accordingly in the prior written notification. The envisaged amendment shall become effective unless the Purchaser expressly objects within five (5) working days after receipt of such notice. In case of the Purchaser's objection, Befesa reserves the right to terminate the contract with an appropriate notice period.

## 2. TERMS AND CONDITIONS

### 2.1 Contract Conclusion

- (i) Befesa's offers only constitute a non-binding invitation to the Purchaser to submit a binding offer to Befesa by placing an order (hereinafter the "**Purchase Order**"). A contract between Befesa and the Purchaser is concluded if Befesa accepts the Purchaser's Purchase Order by sending a confirmation (hereinafter the "**Order Confirmation**").
- (ii) Unless otherwise agreed in writing, any information and data contained in data sheets, product specifications or advertising materials of Befesa shall not form part of the contract.

## 2.2 Credit Guarantees

- (i) Befesa is entitled to refuse performance (i.e. delivery) unless (i) the Purchaser has presented and proven sufficient credit guarantee as well as other agreed payment securities or (ii) the Purchaser offers concurrent payment.
- (ii) Befesa is entitled to withdraw from or terminate the contract if it becomes apparent that the Purchaser is not creditworthy, in particular in case of (i) a protest regarding a bill of exchange or a cheque occurs, (ii) payments by the Purchaser stop, (iii) an unsuccessful enforcement attempt against the Purchaser, or in case of an oath of disclosure; such event must not necessarily have occurred between Befesa and the Purchaser, or (iv) it becomes apparent that the Purchaser has provided inaccurate information regarding its creditworthiness and this information is of considerable importance.

## 2.3 Documents

All rights of use with respect to illustrations, drawings, calculations and other documents ("**Documents**") provided by Befesa to the Purchaser during the contractual negotiations remain with Befesa. The Purchaser may use the Documents received for the purpose of evaluating the offer and – if a contract is concluded – for the purpose of executing the contract. The Documents may not be made accessible to third parties without Befesa's express written consent. Once the purpose of evaluating the offer and executing the contract is reached, the Purchaser shall, at Befesa's request, return or destroy all Documents and confirm this fact in writing.

## 2.4 Price and Payment Terms

- (i) The price agreed with the Purchaser when the contract was concluded is binding. The statutory value added tax is not included in the prices and shall be paid additionally by the customer.
- (ii) Packing costs, unless agreed otherwise in the contract, are invoiced separately to the Purchaser.
- (iii) Unless otherwise agreed, all claims of Befesa become due immediately upon contract conclusion. The purchase price must be fully paid by the Purchaser within thirty (30) days from the invoice date to the bank account indicated on the invoice. Upon expiration of the applicable payment deadline, the Purchaser shall be in default.
- (iv) The invoice can be sent in text format (email suffices).
- (v) In case of due payments and/or payment default, Befesa is entitled to charge statutory interest. Statutory and contractual termination rights remain unaffected.

## **2.5 Invoice Discounting and Assignment of Receivables**

Befesa may discount the outstanding invoices and reserves the right to assign or factor its claims against the Purchaser.

## **2.6 Purchaser's Right of Set-off and Retention**

- (i) The Purchaser is not entitled to set off any amounts due against counter-claims on its part, unless such counter-claims are uncontested, non appealable or ready for decision.
- (ii) The Purchaser is only entitled to exercise rights of retention with regard to counter-claims that are undisputed, non appealable or ready for decision.

## **2.7 Delivery and transport**

- (i) Befesa's compliance with agreed delivery periods is subject to the fulfillment of any contractual duties on the part of the Purchaser, in particular duties of cooperation, the payment of any agreed amounts and, if applicable, the provision of agreed security. If the Purchaser fails to meet its contractual duties, Befesa shall have the right to extend the delivery period.
- (ii) Agreed delivery periods for deliveries abroad are subject to the condition that any required export authorization is granted in due time. If a required export authorization is not granted in due time, delivery time extends accordingly; in this case section 2.12 (force majeure) applies.
- (iii) Befesa's contractual obligation to deliver the product is also subject to Befesa's receiving correct and timely delivery itself from its suppliers. This condition shall only apply in case Befesa is not responsible for non-delivery, in particular if it has timely placed a corresponding order with its suppliers. If delivery is not made by its supplier to Befesa, (a) Befesa shall notify the Purchaser immediately, and (b) Befesa is entitled to withdraw from the contract, with any payments of the Purchaser to be refunded immediately.
- (iv) If acceptance of the delivery is delayed as a result of culpable conduct of the Purchaser, the Purchaser shall compensate Befesa for any damages resulting thereof.

## **2.8 Transfer of Risk**

Unless otherwise agreed in writing, all of Befesa's deliveries are EX WORKS (as defined in the Incoterms 2010).

## **2.9 Additional Obligations of the Purchaser**

- (i) The Purchaser is responsible for any authorization, approvals or certifications required for contractual performance, including but not limited to import and export authorizations.
- (ii) The Purchaser shall at all times be solely responsible for: (a) compliance with legal and safety requirements with regard to the use or the disposal of the product(s), (b) conducting all necessary testing and verification, including for fitness for the intended purpose, prior to the use of product(s) purchased from Befesa, (c) familiarizing itself, its employees and customers with the product information and the handling of the product(s).

## **2.10 Defects**

- (i) Befesa does not assume any liability in terms of guarantees for quality, durability or any other guarantees, unless Befesa expressly declared such a guarantee in writing. The products are supplied in customary quality and finish, taking into account usual market tolerances for dimensions, weights and quality.
- (ii) Befesa assumes liability for defects according to the applicable laws, unless this section 2.10 holds otherwise.
- (iii) The Purchaser has, to the extent performable in the ordinary course of business, to duly inspect the goods immediately upon delivery and to notify any transport damages, apparent defects as well as missing goods. The notification shall not be deemed immediately when it is not given within three (3) working days of delivery. Defects which cannot be discovered within this period even upon careful inspection (hidden defects) have to be notified to Befesa immediately upon detection, at latest within three (3) working days after the date and time of detection. If notification is not given as set out in this section (iii), the goods shall be deemed to be approved by the Purchaser.
- (iv) In case the Purchaser claims a defect of the product, he is obliged, to a reasonable extent, to provide Befesa with the necessary information about type and appearance of the defect and to assist Befesa in localizing the defect.
- (v) Befesa is not liable for defects in the event of failure to use the products in accordance with any instructions, specifications, use statements or conditions of use made available by Befesa to the Purchaser. Such information includes but is not limited to product data, product information, limited use information.
- (vi) The warranty period is 12 months and shall commence with the passing of the risk. This does not apply in case Befesa is liable without restrictions according to section 2.11.

- (vii) For the rectification of defects by Befesa the following rules apply:
  - (a) Defects shall be rectified by Befesa, at its choice, by way of re-delivery or subsequent repair. Re-delivery may be performed by delivering a new product or a completely refurbished product.
  - (b) If the Purchaser intends to ship goods to Befesa it has to notify Befesa of such in advance. The Purchaser commits to liaise with Befesa prior to sending the goods on the terms of customs handling (especially in regard to determining the proper value of the product with relevance for customs clearance).
  - (c) With respect to rectified defects the warranty period shall be either 6 months in length, commencing with the arrival of the shipment at the Purchaser, or the remaining warranty period for the whole product, whichever is longer. This does not apply in case Befesa is liable without restrictions, as set down in section 2.11. The rectification of a defect by Befesa does not constitute an acknowledgement of an according claim of the Purchaser.

## **2.11 Liability**

- (i) Befesa is fully liable in accordance with statutory provisions for damages to life, body or health. Furthermore, Befesa is fully liable in accordance with statutory provisions for other damages based on intent or gross negligence.
- (ii) In the case of simple (i.e. not grossly) negligent breaches of duties that are essential for the reasonable and proper performance of the contract and that the other party duly has relied and may duly rely upon ("*Kardinalpflichten*"), Befesa's liability shall be limited to the typical foreseeable damage.
- (iii) Notwithstanding section (iv), any other claim for damages is excluded.
- (iv) Limitations and exclusion of liability laid down in this section 2.11 and sections 2.10 (v) and 2.10 (vii) (c) leave unimpaired the liability of Befesa resulting from the mandatory provisions of the German Product Liability Act (*Produkthaftungsgesetz*), from fraudulent concealment of a defect or from any declaration of guarantee for the condition of the goods.
- (v) The Purchaser commits to discuss and agree upon, in advance, with Befesa any contractual penalty payments or other contract clauses suitable to enhance damages that the Purchaser intends to promise to the end customer.
- (vi) This section 2.11 governs any claims brought forward by the Purchaser against Befesa, irrespective of their legal foundation, including, without limitation, liability arising out of contract and tort.

- (vii) Insofar as Befesa's liability is limited or excluded under this section 2.11, these limitations and exclusions apply to the same extent to the personal liability of the employees, the legal representatives and the vicarious agents of Befesa.

## **2.12 Force Majeure**

- (i) Neither Party shall be responsible and held liable for any delay or default in the performance of its obligations under the contract to the extent and as long as this default is caused by force majeure. Force majeure shall include all circumstances outside the control of the parties, such as natural disasters, governmental actions, official decisions, blockades, war or other military conflicts, mobilization, civil commotions, terrorist attacks, strike, lockout and other labour disturbances, attachment/confiscation, embargo or other circumstances which are unforeseeable, serious and are not the parties' fault, and which occur after conclusion of this contract.
- (ii) If either one of the parties is permanently prevented by force majeure from performing its contractual obligations, both parties are entitled to cancel the contract. In case of partial prevention, the right to cancel shall only exist pertaining to the part of the contract not yet performed, unless the Purchaser's interests have been dispensed entirely due to the force majeure impairment.
- (iii) If the force majeure happens to be of temporary nature, the agreed upon delivery dates shall be extended by the period of the caused delay (plus adequate restart periods). If it cannot be reasonably expected from the Purchaser to accept the delivery at such later date, the Purchaser is entitled to cancel the contract by immediate notice given in writing to Befesa. As a rule, a delay of up to 5 shall be deemed acceptable.
- (iv) Each party shall use their best efforts to do what is necessary and reasonable to minimize the extent of the consequences caused by force majeure. The party affected by force majeure shall immediately inform the other party in writing about the start and end of the impediment.
- (v) The regulations of this section 2.12 also apply in case the force majeure occurs at one of Befesa's suppliers, leading to Befesa's inability to perform their contractual obligations.

## **2.13 Retention of Title**

- (i) Befesa retains title to all goods delivered until receipt of all payments due.
- (ii) If Befesa files an action against a third person who obtained a levy of execution ("Pfändung"), with the intent of canceling or staying such execution ("Drittwiderrspruchsklage"), the Purchaser is obligated to indemnify and hold

harmless Befesa from all judicial and extrajudicial costs for which Befesa is not compensated by the third party levying the execution.

- (iii) Until the passage of title, the Purchaser is obligated to treat the delivered good with due care, to maintain it at its own cost and to procure adequate insurance against damage, destruction and loss of the good. The Purchaser already now transfers all insurance claims and other damage claims resulting from damage, destruction and loss of the delivered goods to Befesa, which hereby accepts the transfer, as security. Any damages to and loss of the goods as well as insolvency of the Purchaser and/or its agent in possession, as well as changes in ownership, must be immediately notified to Befesa.
- (iv) The Purchaser shall, as long as it complies with its duties towards Befesa, be authorized to sell the goods in the usual course of business. The Purchaser herewith assigns to Befesa all future claims against third parties arising out of the sale of the goods as security. The Purchaser is obliged to provide Befesa with the appropriate information and to undertake all contributory actions necessary for the enforcement of these rights.
- (v) In case of levy of execution or other third-party interventions, the Purchaser shall inform the third party of the rights Befesa holds with respect to the delivered goods, and shall immediately notify Befesa. If the customer fails to meet this obligation, it shall be liable for the resulting damage.
- (vi) If the value of all securities assigned by the Purchaser to Befesa should exceed the value of the claims Befesa holds against the Purchaser by more than 10%, then Befesa shall release the existing securities in the corresponding amount.
- (vii) Any processing or modification of products by the Purchaser prior to the transfer of title shall be deemed effected on behalf of Befesa (it being understood that this does not give rise to any claims of Purchaser vis-à-vis Befesa). If the products are processed together with other objects not belonging to Befesa, Befesa acquires a co-ownership in the resulting new objects in the proportion of the value of its products (final invoice total, including VAT) to the value of the other processed objects at the time of processing. In all other respects, the resulting new items shall be treated like the products delivered subject to retention of title.
- (viii) If the products are inseparably mixed with other objects not belonging to Befesa, Befesa shall acquire co-ownership in the new objects in the proportion of the value of its product (final invoice total, including VAT) to the value of the other, intermixed objects at the time of mixing. If the products are mixed in such a way that the resulting Purchaser's object is to be regarded as the

main object, it shall be understood that Purchaser transfers to Befesa co-ownership in such object on a pro-rata basis. The Purchaser undertakes to safe-keep the owned or co-owned objects on Befesa's behalf.

## **2.14 Confidentiality**

- (i) All business-related information, which the parties make accessible to the other party in performance of the contracts concluded under these General Terms and Conditions of Sale, are deemed "**Confidential Information**", unless they have been expressly declared otherwise, they have become known to the public without violation of this section 2.14, a third party has received them free and rightful for the purpose of non-confidential usage or the receiving party had investigated them on their own behalf prior to the receipt without necessary recourse to the Confidential Information. The existence of any of these exclusions shall be immediately notified in writing to the other party.
- (ii) The parties commit to keep Confidential Information confidential and to use them solely for the performance of their contractual duties. Befesa is entitled to disclose Confidential Information to subcontractors on a need-to-know basis.
- (iii) Both parties shall be exempted from their duty of confidentiality as far as they are obliged by applicable laws or by official order to disclose information. In such cases the other party has to be informed immediately in writing of such intended disclosure of information in order to give the other party the opportunity to apply for legal remedies to prevent such disclosure.
- (iv) The duty of confidentiality ends five (5) years after the termination of any business relationships between the parties based upon these General Terms and Conditions of Sale.

## **3. MISCELLANEOUS**

### **3.1 Taxes**

In addition to the statutory value added tax any tax, duty, custom or other fee of any nature imposed in connection with any transaction governed by these General Terms and Conditions of Sale by any governmental or quasi-governmental authority shall be borne by the Purchaser. In the event Befesa is required to prepay any such tax, the Purchaser shall fully reimburse such tax prepayment to Befesa.

### **3.2 Prohibition of Assignment**

The Purchaser may not assign claims for delivery against Befesa to third parties.



### **3.3 Modification, Written Form**

Unless otherwise agreed in these General Terms and Conditions of Sale, any changes, amendments and/or additions to these General Terms and Conditions of Sale, including to this clause 3.3, must be agreed in writing between the contractual parties in order to be effective.

### **3.4 Notifications**

Any notices required or permitted under these General Terms and Conditions of Sale given by the Purchaser to Befesa shall be made using the address and order number supplied by Befesa in the Order Confirmation in textual form, unless the written form (i.e. a signed physical document) is required. Any notices required or permitted under these General Terms and Conditions of Sale given by Befesa to the Purchaser shall be made using the address supplied by the Purchaser in the Purchase Order in textual form, unless the written form (i.e. a signed physical document) is required.

### **3.5 Severability**

If individual provisions of these General Terms and Conditions of Sale are or become fully or partially ineffective, the remaining provisions of the General Terms and Conditions of Sale shall not be affected thereby. This also applies if an unintended omission is found in the contract.

### **3.6 Applicable Legislation and Place of Jurisdiction**

- (i) These General Terms and Conditions of Sale and all legal relations between the Purchaser and Befesa shall be governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).
- (ii) Exclusive place of jurisdiction for all disputes arising between the parties shall be the registered seat of Befesa ([●]). Befesa is also entitled to take legal action at the registered seat of the Purchaser.

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