

# Reinhold Bürkle Technische Federn GmbH: General Terms of Business

## 1. Scope of application:

These general terms of business apply to all current and future commercial relationships with contractors. Contractors, as understood by these terms of business, are natural or legal entities or partnerships with legal personality with whom Reinhold Bürkle Technische Federn GmbH enters into a commercial relationship that concerns the exercising of a commercial or independent professional activity.

Any terms of business which the Purchaser seeks to impose and which are inconsistent with, deviate from or amend our terms of business, even where we are aware of them, shall not be recognised by us, unless we expressly agree to them in writing. Our terms of business apply even where we supply the Purchaser unreservedly, although we are aware of conditions on the purchaser's part which are inconsistent or deviate from our own.

## 2. Offers, documents relating thereto, conclusion of contract, sub-contracts

Our offers are subject to alteration without notice. Documents accompanying the offer such as illustrations, drawings and measurements shall serve as approximate guidelines only, unless it is expressly indicated that they are binding. In particular, they cannot be taken as an exact representation of the product's composition. We reserve the right to technical alterations as well as changes in form, colour and/or weight provided these deviations remain reasonable. We reserve our ownership and copyright in cost estimates, drawings and other documentation or data in electronic form. These may not be made available to third parties. The Purchaser/Supplier must obtain our explicit written consent before passing them on to third parties. We are also bound not to allow third parties access to any plans which the Purchaser has indicated are confidential.

Orders made by purchasers are binding. We are entitled to accept the order containing the contractual offer within two weeks after receiving it. Acceptance can be declared in writing or by despatch to the purchaser. Under the terms of this contract confirmation must be in writing. No oral declarations will be binding, unless they are confirmed in writing. We do not accept any liability for mistakes arising from any documentation (e.g. drawings) or erroneous or unclear instructions supplied by the Purchaser. This also applies to oral instructions.

We will carry out orders according to illustrations, patterns or other instructions without ensuring that they are not in breach of any third party's commercial property rights. We do not accept any liability for such claims. Ensuring that commercial property rights are protected shall be the Purchaser's responsibility.

Our confirmation always reads 'Surface shiny', even where the illustrations indicate that a certain treatment is to be applied, e.g. nickel, chrome or phosphate plating, etc. Unless we have explicitly agreed to a treated surface. Should we supply products with ready treated surfaces, the treatment will be carried out by a fine metal finishing works, but only where the Purchaser's order specifies this and at the Purchaser's expense. As regards the quality of the surface treatment (pickling, hydrogenating, etc.), the Purchaser may only claim compensation for damage from the metal finishing works. We will supply the Purchaser with the metal finishing works' name and address and any other information needed for making his claims under the warranty for defects.

We are entitled to grant subcontracts.

## 3. Prices, payment, rights of retention

Listed prices for contractors are understood as being ex factory and do not include value added tax, packaging, insurance or unloading. If payment is agreed to in a foreign currency, the Purchaser shall be responsible for changes in the currency rate to the Euro.

If, between the conclusion and fulfilment of the contract, taxes, customs, transportation charges, fees or expenses are raised or newly introduced, we are entitled to increase the price by the corresponding amount where four months have passed since the conclusion of the contract or where the contractual partner is a merchant. The prices are valid for four months following the date of the contract's conclusion. Upon agreement of a delivery period of more than four months or in cases of continuing obligation contracts that extend for a period of more than four months, we are entitled to charge the Purchaser for increases in costs for procurement/delivery which have emerged in the meantime, including increases in prices resulting from changes to laws (e.g. increase of the value-added tax).

The Purchaser may only claim a set-off against payment where his claims have been upheld in a final, non-appealable legal decision or recognised by us. The Purchaser can only exercise a right of retention where his claim is based on the same contractual relationship.

## 4. Time of delivery, delay of delivery, partial deliveries, shortages and surpluses

The time of delivery is established by the agreements of the contractual parties. Our observance of the time of delivery depends on the clarification of all commercial and technical questions between the contractual parties, the fulfilment of the Purchaser's compliance with his duties, such as providing the required administrative certification or authorisation or making a fixed down payment. If this is not the case, then the time of delivery is extended accordingly. This does not apply where we are responsible for the delay of delivery.

The time of delivery will be deemed to be observed when the goods to be delivered have left the factory or the Purchaser has been informed that they are ready for despatch by the stated date. Where acceptance is required, the acceptance deadline - unless acceptance is refused justifiably - or the announcement that the goods are ready for despatch is definitive.

Our observance of the time of delivery depends on prompt and proper delivery to us and the Purchaser's compliance with contractual duties. If there is a delay in the work or its completion for which the Purchaser is responsible, we will not be liable for a failure to deliver within the specified period. Cases of *force majeure*, in particular labour disputes and other unanticipated events in our business or in that of one of our sub-contractors will release us from our obligation to deliver on time. The delivery period will be extended in accordance with the duration of the disruptive event. This also applies to cases of *force majeure* during delivery delay. Similarly, where authorisations, documents or necessary instructions have not been received from the Purchaser in time, the delivery time will be extended accordingly. This also applies to later changes to the order. We are obliged to inform the Purchaser without delay of any such event.

If the Purchaser suffers damage as a result of a delay for which we are liable under Art. 9, he may be entitled to compensation of 0.5% maximum of the price of the delayed delivery for each full week of the delay, but the compensation shall not exceed a total of 5% of the whole delivery. No other claims for compensation will be admitted.

If the Purchaser sets an acceptable deadline for delivery after the expiration of a previous deadline and in consideration of exceptional cases as defined by law, and should we fail to meet this deadline, the Purchaser is entitled to withdraw from the contract as stipulated by law. At our request, the Purchaser is obliged to state within an appropriate period whether he will terminate the contract on account of the delayed delivery or still insists on delivery.

The Purchaser must accept deliveries where there are shortages or surpluses of up to 10%. If the final amount is exceeded and this is due to the Purchaser's specifications, we will be entitled to charge higher prices for the surplus in accordance with prevailing market conditions.

Partial deliveries are admissible.

## 5. Acceptance and passing of risk

The acceptance of deliveries or services must occur without delay once the Purchaser has been notified of completion. This also applies to partial services or deliveries. If acceptance is to occur, it is in each case definitive for the passing of risk. Acceptance must occur without delay before the acceptance deadline or after the announcement that the goods are ready for acceptance. The Purchaser may not refuse acceptance on account of a non-essential defect.

The risk is passed to the Purchaser once the parts to be delivered leave our factory, even where these are part deliveries or where we are responsible for the despatch or transportation costs. If despatch or acceptance is delayed or not undertaken on account of circumstances for which we are not accountable, the risk is passed to the purchaser on the day of the announcement that the deliveries are ready for despatch or the goods ready for acceptance. Insurance for damage during transportation will only be taken out where requested by the Purchaser and at the Purchaser's expense. The Purchaser is to bear all the risk for goods stated to be ready for despatch. Otherwise, we are entitled to despatch them as we see fit or to store them at the Purchaser's expense and risk.

## 6. Reservation of ownership

The contractual objects remain the property of the supplier until all accounts from the current commercial relationship have been completely settled.

The Purchaser is not entitled to pledge or in any other way encumber items that remain subject to a reservation of ownership. The Purchaser is obliged to notify us without delay of any third-party access to contractual objects, as e.g. in cases of pledges, or any damage to or destruction of the contractual object. We are entitled to terminate the contract and reclaim the contractual object where the Purchaser acts in breach of contract, in particular by delaying payment or by violating a previously mentioned obligation.

The Purchaser is entitled to resell the contractual object in a proper business transaction. The Purchaser hereby assigns to us all future claims, in the amount stated on the invoice, which he has obtained against the third party from the resale. We accept the assignment. After assignment, the Purchaser is authorised to collect his claims. We reserve the right to collect the claims if the Purchaser does not act in accordance with his payment obligations or delays payment.

Any treatment and finishing of the product subject to a reservation of ownership shall be carried out by the Purchaser for us as the manufacturer, but this shall not give rise to any obligations on our part. If the Purchaser acquires sole ownership of the new movable good under the law in force, he shall on conclusion of the contract assign us joint ownership in proportion to our work on the components in the new product which are subject to a reservation of ownership and shall retain this for us. The same applies when the contractual object is mixed with other objects that do not belong to us.

We are obliged to release, upon request by the Purchaser, the securities to which we are entitled when their value exceeds the claims to be secured by more than 10%, provided these claims have not yet been settled.

## 7. Warranty and claims of fault

We provide a warranty for the repair or replacement (post-performance repair) of the defects to the contractual object. The form of repair or replacement is left to our discretion. After consultation, the Purchaser is to grant us the required time and opportunity to undertake all the repairs and deliver all the replacements that appear to be necessary; otherwise we are not liable for the consequences ensuing therefrom. Only in urgent cases representing a danger to operational safety or for preventing unusually large damage, and where we are notified immediately, does the Purchaser possess the right to remove the defect or have it removed by a third party and to demand compensation from us for the resulting expenses.

If the post-performance repair fails, if an appropriate deadline set by the Purchaser for us to complete the repair passes without result or if this deadline is not reasonable for the Purchaser, he can choose between a reduction of remuneration or the termination of the contract. The Purchaser is not entitled to terminate the contract in cases of limited breaches of contract, in particular in cases of limited defects.

If the Purchaser decides to rescind the contract due to a legal or material defect after a failed repair, he is not entitled to compensation for damages on account of the defect. If the Purchaser decides to seek compensation for damages after a failed repair, the item remains in the possession of the Purchaser if this appears reasonable to him. Compensation for damage is limited to the difference between the purchase price and the value of the defective item. This does not apply where we have acted maliciously in violation of the contract.

No warranty is accepted in the following cases: Unsuitable or improper application, mistakes in assembly or commencement of use by the Purchaser or any third party, natural wear and tear, substandard or negligent treatment, improper maintenance, unsuitable equipment, chemical, electrochemical or electric effects – unless we are responsible for them.

The warranty expires after one year except in cases of premeditation, physical or health damages and loss of life or in cases described in Article 438 paragraph 1 clause 2, 634 a paragraph 1 clause 2 of the German Civil Code (warranty for defects involving structures, built-in components, services related to structural plans and monitoring).

For goods which are to a large extent produced by third parties, our liability is limited to the assignment of the liability claims to which we are entitled against the Supplier of the said goods.

If the Purchaser illegitimately makes a claim against us to a warranty without a warranty claim, he has to compensate us for all the costs arising in connection with the review of the contractual object.

If the Purchaser or any third party makes alterations improperly, we do not assume any liability for the consequences ensuing therefrom. The same applies for alterations to the contractual object made without our prior consent.

We will bear the direct costs of repairs or delivering replacements or the costs of the price of the parts insofar as the complaint is seen to be justified. We will also bear the transportation costs of the replacement parts as well as appropriate and demonstrable costs for removal and installation.

The laws regulating the sale of consumer goods remain unaffected by the preceding sections, in particular rights of recourse (Articles 478, 479 German Civil Code), provided the obligation to give notice of defects according to Article 377 of the German Commercial Code is not violated.

## 8. Compensation and limitation of action

We will not be liable for damage arising from defects or other breaches of our contractual obligations. We will, however, be liable for damages for loss of life, physical injury and damage to health where these are due to our failure to comply with our obligations and for any other damage due to wilful or grossly negligent breaches on our part or for damage that is covered by our guarantee. We will accept liability for damage where liability is imposed by the relevant product liability legislation or where it is due to a failure to comply with fundamental contractual obligations. In the last case, our liability will be restricted to damage which is predictable and typical. We accept liability for any breach of duties by one of our legal representatives or employees.

All claims made by the Purchaser – irrespective of the legal reasons – expire after one year. Claims for damage compensation according to Article 9 paragraph 1 clause 2 are governed by the legally defined periods. They also apply for defective structures or for delivered items that were used in accordance with their conventional application for a structure and have caused the defect (see Article 8 paragraph 5).

## 9. Tools

In all cases tools used will be considered our property. If no follow-up order is received within 10 years of the first order, we will scrap the tools after securing a written authorisation from the Purchaser.

The Purchaser must be aware that the designs and the instruments of production (tools, moulds, templates, etc.) ordered by him will also include considerable technical skills and capabilities on the Supplier's part so that we have a particular interest in the confidentiality of these items. For this reason, it is agreed that the Purchaser may not at any time or on any legal basis demand the return of designs and the instruments of production, even where the Purchaser has borne the total costs of the tools and/or the business relationship has been terminated. This is without prejudice to the Purchaser's right to request financial compensation where he meets the legal requirements.

## 10. Final provisions and jurisdiction

The applicable law shall be that of the Federal Republic of Germany. Provisions of the UN Sales Law are not applicable.

If the purchaser is a merchant, legal entity of the public law or a special authority under public law, and provided the order confirmation does not state otherwise, our headquarters determines the place of performance and court of jurisdiction; we are, however, entitled to prosecute the Purchaser in his court of jurisdiction.

Should individual terms of the contract with the Purchaser, including these General Terms of Business, be or become entirely or partially invalid, the validity of the remaining terms shall be unaffected. The entirely or partially invalid term shall be replaced by a term that comes closest to realising the financial success of the invalid term.

Dated: July 2004