



# **General Terms and Conditions of Business**

of  
**btl next GmbH**

**Amtsgericht Düsseldorf (registration court) - HRB 90111**

**Managing Director:**

Michael Terwint

## **1.**

### **Application, Preface**

a) The following General Terms and Conditions (hereinafter GTC) are part of all offers and contracts regarding our deliverable and performance (in particular planning, construction; assembly and program compilations) and shall also be applied to all future contracts with the customer. As far as there is a lease contract to be carried out, our General Terms and Conditions of Lease (GTCL) shall apply additionally in this context.

b) Any and all agreements stipulated between us and the Customer for the purpose of performing the contract are fixed in the individual agreement and the included GTC and/or the GTCL in the moment of its conclusion. Any conflicting or deviating terms and conditions of business issued by the customer shall not be recognized.

c) Our offers are subject to change unless they have been explicitly marked as binding. The contract with the Customer shall be considered as awarded upon receipt of our written order confirmation or the execution of our delivery or performance.

d) Consumers in the sense of our GTC are individual persons unless the purpose of ordering our deliverable and performance is predominantly of commercial nature or can be attributed to his or her selfemployed professional activity. Whereas Entrepreneur in the sense of the GTC are individual persons, legal entities or partnerships which act on behalf of their commercial or self-employed professional activity in the moment of concluding the contract. The customer is deemed to be Merchant in terms of the German Commercial Code (Handelsgesetzbuch - HGB), if his business consists of mercantile trade. Customers in the sense of these GTC are Consumers, Entrepreneurs and Merchants likewise.

## 2.

### **Prices, Deadlines, Partial Deliveries, Force Majeure**

a) Our general list prices valid on the day of delivery or performance shall be applicable excluding packaging, transport, insurance and any assembly costs. The final price indicated in the contact applies to Consumers, including German Value Added Tax. Notwithstanding, the list price valid on the day of delivery or performance, including value added tax, applies to Consumers if the date of conclusion of the contract precedes the concerted date of delivery or performance for a period of at least four months and, additionally, the consumers was informed thereof at least four weeks before the date of delivery or performance. If the new final price differs from the concerted final price more than 5 % to the disadvantage of the Consumer, the consumer can resign from the contract exempt from charges within a period of eight days after the reception of the notification.

b) Delivery and performance deadlines are applicable subject to the correct and timely delivery to us and must have been confirmed explicitly to the customer by us in written form. If we cannot comply with binding delivery or performance deadlines for reasons we are not responsible for (unavailability of a good or service), the customer will be informed instantly and at the same time the estimated new deadline will be communicated to him. If the delivery or performance remains unavailable even within the new deadline, we are authorized to resign from the contract completely or partially; any money consideration already made by the Customer will be reimbursed immediately. The following case of unavailability of a good or service in that sense shall be named explicitly: Incorrect or unpunctual deliveries by our own suppliers despite having concluded a congruent covering transaction, while both we and our supplier acted independent of negligence or we have no obligation of acquisition in the particular case. Should our delivery or performance be delayed, the customer shall set and grant us an appropriate period of grace.

c) We reserve the right to make partial deliveries and partial performance. Concerning business relations with Consumers we only exercise this right if such partial delivery and partial performance is not unacceptable for the Consumer. Such partial deliveries and partial performance shall be carried out and invoiced separately.

d) War, strikes, lock-outs, lack of raw materials and energy supply, operational and transport interruptions caused thereby and official orders - also if such events make the execution of the business concerned uneconomical for the foreseeable future - as well as all cases of force majeure, any of which could also affect our suppliers, release us from our obligation to deliver or perform for the duration of the interruption and the scope of their effects. Such

events entitle us to withdraw entirely or partially from the contract without the Customer being entitled to demand compensation.

### **3.**

#### **Shipment, Packaging, Risk of Loss, Insurance**

- a) Deliveries are made in standard packaging only. If the Entrepreneur requests the delivery to be shipped to a different place than the agreed place of delivery, the risk of loss is passed on to the Entrepreneur as soon as the goods are handed over to the transport company or when the goods are loaded onto vehicles of the Entrepreneur. This also applies if carriage paid delivery or transport with our own means of transport has been agreed. The shipment route and means of transport shall be determined by us unless otherwise agreed. If the shipment should be delayed due to reasons the Customer is responsible for, the risk of loss shall be passed on to the Customer upon receipt of the readiness for shipment notification.
- b) The Customer shall make complaints with respect to transport damage directly to the transport company within the special time period stipulated therefore and shall notify us thereof. Any Consumer's rights regarding our defects liability for the good remain unaffected.
- c) Transport insurances and other insurances shall only be concluded by us at the explicit request of the Customer who shall also bear the costs.

### **4.**

#### **Invoicing, Payment**

- a) Unless individually otherwise provided, the money consideration for our rendered or accepted deliverables and performance is immediately due. The invoiced amount is payable in full within 30 days, for Entrepreneurs beginning with the service provision or acceptance and for Consumers beginning with the reception of our invoice.
- b) We are not obliged to accept checks or bills of exchange. Checks and bills of exchange shall only be accepted on account of performance.
- c) If the Customer defaults with a payment incumbent on him, we shall, irrespective of whether further default damage is claimed, be entitled to invoice default interest at the rate of 5 % above the ECB base rate for Consumers and at the rate of 9 % above the ECB base rate for Entrepreneurs. In case of the default with a payment incumbent on an Entrepreneur, we are furthermore entitled by law to invoice a one-time flat charge of 40 Euro.

d) Setting off a claim with counterclaims is excluded unless it takes place with a debt which has been recognized by us or has become res judicata or which originates from the same contractual relationship. Rights of retention are excluded for Entrepreneurs. Consumers can only exercise a right of retention if their counterclaim is based upon the same contractual relationship.

e) If there are doubts concerning the Customer's solvency, particularly if there are payments in arrears, we can request advance payments or securities for further deliverables and performance irrespective of further claims and revoke agreed payment targets.

f) We reserve the right of cession as well as the right of entitlement of a third party to collect our claim against the Customer. The Customer has to obey the directions of these third parties to whom we have ceded the claim and of the third parties we have permitted to collect the debt respectively. Any objections or exceptions of the Customer remain unaffected.

g) Payments with discharging effect can only be performed to PMF Factoring GmbH to which we have ceded our claims based upon the business relationship with the Customer by means of a factoring contract. This does not apply to amounts of prepayment, up-front payment and down payment.

## **5.**

### **Liability for Defects, Compensation, Limitation of Liability**

a) Entrepreneurs shall examine and inspect our deliverables and performance as well as perform a function test immediately after receipt. The Entrepreneur is obliged to indicate details of apparent defects in writing without delay but at the latest within 14 days. The Entrepreneur needs to prove the date of ascertaining the defect. The provisions §§ 377, 378 German Commercial Code (Handelsgesetzbuch - HGB), shall apply unaffected for business with Merchants provided that the complaint is made in writing.

b) If the goods have a defect at the time of passing on the risk of loss, we shall rectify the defect or make a new delivery depending on our choice. If the Customer is Consumer, the choice between rectification of the defect or new delivery is his. Under the condition of § 439 paragraph 3 German Civil Code (Bürgerliches Gesetzbuch - BGB), we are entitled to reject the chosen one or both types of supplementary performance due to disproportionality of the demand. Should we allow an appropriate time period for rectifying the defect or making a new delivery to elapse without a result or if a subsequent fulfillment is unacceptable for the

Customer or if the subsequent fulfillment is unsuccessful, the Customer may withdraw from the contract or diminish the payment irrespective of any compensation claims. Should the defect be insignificant, the customer is only entitled to diminish the contractual price.

c) If the goods supplied by us or our performance is examined upon the request of the Customer and if it is shown hereby that the Customer's complaint was obviously without grounds, the Customer shall reimburse the expenditure which we thus incurred or which came about due to work on the delivered goods or performance.

d) We are exempt from Entrepreneur's claims based on liability for defects which were not indicated in time pursuant to paragraph 5 a). Entering into negotiations about complaints does not mean that we waive the objection to a complaint with respect to product defects which was not made in time or is insufficient in detail or without grounds. If the Customer has carried out work on or has made modifications to the delivered goods or performance or had such work or modifications carried out, our liability for defects is also no longer valid if the defect was caused by the aforementioned work or modifications or if it is thus no longer possible to rectify the defect.

e) As far as nothing else is agreed upon in the contract, the following applies for our liability:

- Our contractual and non-contractual liability is confined to claims that are based on intent or gross negligence, unless the violation affects an essential contractual duty. In case of the violation of such an essential contractual duty caused by ordinary negligence, the liability for compensation is limited to the, typically occurring, direct damage which was foreseeable in the moment of the conclusion of the contract.

- The term essential contractual duty is defined as a duty whose fulfillment in the first place permits the duly execution of the contract and on whose observance the other party may rely under regular circumstances.

- For Entrepreneurs the limitation of claims for compensation begins with the end of the month containing the closing date of the assignment irrespective of awareness, unless the claim can be based on intent.

- The above limitations of liability equally apply to the liability of legal representatives and any auxiliary persons.

- The compulsory liability pursuant to the German Product Liability Act (Produkthaftungsgesetz), the pre-contractual liability, the liability for any guarantees or fraudulent intent as well as the liability for faulty damage to life, body and health remains unaffected.

f) The limitation period for claims based on defects is limited to 12 months for business with Entrepreneurs, starting from the passing on of risk for loss. The abbreviated deadline for liability for defects is not applicable on culpably caused personal injury attributable to us and damages caused by intentional or gross negligence or fraudulent intent as well as recourse actions pursuant to §§ 478, 479 German Civil Code (Bürgerliches Gesetzbuch - BGB).

## **6.**

### **Rescission of the hirer**

If the tenant withdraws from the contract for reasons for which we are not responsible the hirer will be charged 30% of the contract value as lump sum compensation.

If the withdrawal takes place less than four weeks before the contractual rental period (start of construction),

then 45%, with less than 2 weeks 60% and with less than one week 75% of the order value are due for payment to us.

If the hirer withdraws during the contractually agreed rental period, each day of rental used shall be remunerated at 100%.

The day of receipt of the notice of withdrawal by the lessor counts as the full rental day. The consumer is expressly permitted to provide evidence of this, that a loss of rental income has not occurred at all or is significantly lower than the corresponding aforementioned lump sum.

## **7.**

### **Retention of Title**

a) We reserve the right to retain the title of ownership to delivered goods (goods subject to retention) until we have received all payments arising from the contract. The reservation of title is also deemed as security for the Merchant's outstanding balance in current account cases.

b) If the Merchant further processes our goods, we shall be deemed to be the producer and acquire the title of ownership for the newly created goods. If the processing occurs with the use of other materials, we shall acquire joint ownership in proportion to the invoiced value of

our goods to that of the other materials. If our goods are connected to or mixed with the Merchant's products and this is considered to be the main product, the joint ownership of the product shall transfer to us in the proportion of the invoiced value of our goods to the invoiced value of the main product or, if there is no such value, to the market value of the main product. The Merchant shall be deemed to be the custodian in such cases. As far as a declaration by Merchant is required for these regulations under paragraph b), the Merchant shall be obliged to give such declaration and we hereby accept it.

c) The Merchant is entitled to dispose of the goods owned by us in the ordinary course of business as long as he fulfills his duties arising from our business relationship in time.

d) If the Customer acts in a way contrary to contract, particularly if he defaults on payment, we shall be entitled to reclaim the goods subject to retention of title after granting an appropriate period of grace. In order for us to assert the retention of title, a rescission of the contract is only necessary, if the Customer is Consumer. The Customer shall bear the costs of the return transport. A garnishment of the goods subject to retention is deemed a rescission of the contract. We are allowed to sell the goods subject to retention reclaimed by us. The revenues of the sale will be charged against the amount of the Customer's debts after deducting an adequate amount equalizing the costs of the reclamation

e) The Merchant hereby assigns to us all claims arising from the sale and processing of the goods subject to retention as security within the scope of our share of ownership in the sold goods.

f) Upon our request, the Merchant shall give us all necessary information regarding the stock of the goods subject to retention and the claims assigned to us pursuant to paragraph 6 e) as well as undertake to inform his customers of the assignment.

g) Upon the Customer's request we undertake to release the securities due to us as far as their value exceeds the claims to be secured by more than 20 %.

## **8.**

### **Audio-Visual Programs and Recordings, Illustrations, Photographs**

a) We shall accept no liability for the exemption from any third party's rights regarding audio-visual programs, video and sound recordings, written or pictorial illustrations, photographs or other work created by us, given to us by the Customer or produced in cooperation with and upon request of the Customer. If any third party exercises its rights and asserts claims

against us, the Customer shall be obliged to indemnify us from such third-party claims including the costs of legal defense.

b) Any concession of a right of exploitation pertaining a work created by us, requires a previous and adequate gratification-agreement pursuant to § 32 German Copy Right Act (Urhebergesetz - UrhG).

c) If contractually not otherwise agreed, we are entitled to use the audio-visual products of the Customer, in whose production we participated, for advertising purposes and/or to show in public free of charge.

## **9.**

### **Data Protection according to EU-General Data Protection Regulation (GDPR)**

#### **a) Preface**

Personal data, which are collected and processed by us in the context of entering into a contract or of contract processing do serve exclusively for the purpose of entering into a contract, arranging the content of the contract, implementation and processing of the contractual relationship (Art. 6 paragraph 1 b) GDPR). They will generally not be transmitted to third parties. For the purpose of executing payments, the necessary payment-data will be transmitted to the financial institution in charge of executing the payment and to the factoring service provider, for the purpose of carrying out transportation services they will be transmitted to the transportation service provider. Any use of personal data thus occurs only within the necessary extent or provided that we are obliged by law or judicial decision or, if necessary, in order to inhibit any misuse of our IT-infrastructure.

#### **b) Storage**

Customer's personal data will, after the completion of the purpose for which they have been collected, only stored as long as it is necessary due to legal provisions (especially tax law provisions).

#### **c) Customer's rights regarding their personal data**

##### **aa) Access to personal data**

Customers have the right to obtain information whether personal data relating to them is processed by us. If this is the case, customers have the right to request access regarding those personal data as well as to the further information mentioned in Art. 15 of the GDPR.



#### bb) Rectification

Customers have the right to request rectification of inaccurate personal data concerning them as well as the right to request the completion of incomplete personal data according to Art. 16 of the General Data Protection Regulation.

#### cc) Erasure

Customers have the right to obtain the erasure of personal data concerning them without undue delay. We have the obligation to erase personal data without undue delay where one of the following grounds applies:

- The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- The customer withdraws consent on which the processing is based and there is no other legal ground for the processing;
- The personal data have been unlawfully processed.

The right to obtain erasure does not apply, as far as the personal data are necessary for the establishment, exercise or defense of our legal claims.

#### dd) Restriction of processing

Customers have the right to obtain restriction of processing, if

- the customer contests the accuracy of the personal data for a period enabling us to verify the accuracy of the personal data;
- the processing is unlawful and the customer opposes the erasure of the personal data and requests the restriction of their use instead;
- we no longer need the personal data for the purposes of the processing, but they are required by the customer for the establishment, exercise or defense of legal claims;
- the customer has objected to processing pending the verification whether our legitimate grounds override those of the customer.



#### ee) Data Portability

Customers have the right to receive the personal data concerning them, which they have provided to us, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from us, if and to the extent to which the processing is based on consent or on a contract and the processing is carried out by automated means.

#### ff) Right to Withdrawal

As far as the processing of the customers' personal data is based on their consent, customers have the right to withdraw their consent at any time.

- Exemption from costs and right to lodge a complaint

The exercise of your above-mentioned rights is in general free of charge. You have the right to lodge a complaint with the competent supervisory authority.

#### d) Data controller / Contact

You can contact us in case of data protection requests and the exercise of data protection rights by using the following contact details. Controller in terms of the GDPR is:

btl next GmbH  
Andreas Hahn  
Data Protection Coordinator  
Theodorstraße 299  
D-40472 Düsseldorf  
Telefon: +49-211-90 449 - 0  
Telefax: +49-211-90 449 - 555  
E-Mail: [datenschutz@btl.eu](mailto:datenschutz@btl.eu)  
Internet: [www.btl-x.de](http://www.btl-x.de)

**10.**

**Choice of Law, Place of Fulfillment, Court of Venue, Consumer Dispute Settlement, Preference of the German Copy, Severability Clause**

a) The contract shall be governed by the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Regarding business relationships with Consumers this choice of law is applicable only as far as the Consumer does not lack the protection granted by compulsory law of the state where his habitual residence is located.

b) For the Entrepreneur and for us, the place of fulfillment and payment is our place of business.

c) If the Customer is a Merchant, a legal entity, a public corporation or a foundation under public law, the court of jurisdiction for all disputes arising from the contractual relationship, including its validity, shall be the competent court at our place of business or the general court of jurisdiction of such Customer depending on our choice.

d) Online Dispute Settlement Platform and Consumer Dispute Settlement:

The European Commission provides an Online Dispute Settlement Platform that can be found here: <http://ec.europa.eu/consumers/odr/> - We do not participate in dispute settlement procedures at consumer arbitration boards.

e) This English language version of the GTC is a translation of the original German Language version. If there are any contradictions or inconsistencies between the original German Language version of the GTC and any version or translation of the GTC in any other language the German Language version shall prevail.

f) Should any of the provisions contained in these GTC or the contract be legally invalid, the validity of the remainder of the provisions shall remain unaffected by this circumstance.

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