

# General Terms and Conditions

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## 1. General Provisions

The General Terms and Conditions described below govern the relationship between B&T AG, Thun, Switzerland (hereinafter "B&T") and its clients (hereinafter "Client") and are an integral component of any Agreement entered into between B&T and the Client. The Client's subscription and purchase conditions are hereby explicitly excluded and the Client notes with approval that B&T only accepts B&T's General Terms and Conditions as part of any Agreement. Amendments or supplements to these General Terms and Conditions are valid only if made in writing and confirmed by B&T with a legally valid signature.

## 2. Conclusion of the Contract

Any offers B&T makes towards the Client (including brochures, price lists, product illustrations, details displayed in the webshop, etc.) are to be considered as offers without commitment, thus an invitation to make an offer, unless B&T explicitly describes such offer as binding. An Agreement between B&T and the Client is validly concluded only when the Client offers to enter into an agreement by making an order and that offer is accepted by B&T. Orders may be placed by phone calls, in writing, by fax or by email. B&T accepts the offer either by sending a written confirmation (including emails), or by delivering the good to the Client within 14 days. The e-mail notification B&T immediately sends out to confirm receipt of the order in line with the so called Swiss e-commerce regulations is not to be mistaken for the written confirmation B&T sends to the Client to accept the Client's offer.

The Client acknowledges that any comments made in respect of the availability of a specific good are not binding and may in particular be amended retrospectively in the event of production bottlenecks.

B&T reserves the right to make construction changes with the aim to improve technical enhancements.

For transactions that are subject to authorisation, deliveries and contractual performance undertaken by B&T are dependent upon B&T receiving the necessary permits from public authorities. Except in circumstances where B&T is legally obliged to obtain a permit or when it obliges itself explicitly to obtain the permit, the Client is responsible for obtaining any required permits. In any case, the Client shall bear the costs and any related expenses. B&T assumes no liability for receiving the permit.

Orders subject to payment in advance are deemed to be accepted by B&T only after full payment is received within the term defined in the invoice and after subsequent written confirmation by B&T (including by email).

## 3. Prices

Unless otherwise agreed by the parties, prices are EXW Thun according to the Incoterms 2010. VAT, fees and charges (including customs tariffs) as well as costs for transportation, packaging and insurance are borne by the Client.

If, in the course of implementing the Agreement, price changes occur – either due to surcharges levied by suppliers of B&T, currency fluctuations, or increases in taxes or customs charges, etc. – B&T is entitled to adjust the prices accordingly.

## 4. Terms of Payment

Unless other terms of payment have been agreed in writing by the parties, payment is due within 30 days of the invoice date. The Client's right of set-off its debt against possible claims is hereby excluded.

The Client is deemed to be automatically in default – no formal reminder required – once the payment term has expired. At such time, default interest of 5% p.a. shall apply. Moreover, in such cases B&T is legally entitled to demand payment in advance for all outstanding deliveries for the Client (including deliveries relating to other Agreements with B&T), to withdraw from the Agreement and/or to claim damages.

In case of suspicion of insolvency of the Client, B&T may demand payment in advance at any time. Should the Client not render the payment demanded within the term provided, B&T is entitled to withdraw from the Agreement immediately.

## General Terms and Conditions

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### 5. Delivery

The time limits for delivery agreed upon are guidelines and are based on the circumstances apparent at the time the Agreement was concluded. Each time the Agreement is amended, originally agreed time limits for delivery lapse and may have to be redefined.

Partial deliveries by B&T are permitted.

Unforeseeable circumstances such as industrial disruption, late deliveries or delivery failure by B&T's suppliers, labour shortages or shortages in power supply or raw materials, strikes, lockouts, difficulties in securing transport, traffic disruptions, regulatory orders from public bodies and similar circumstances as well as cases of force majeure shall relieve B&T from its delivery obligations for the period of such disruption and within the extent of the effects of such disruption. If it is conceivable that the circumstances mentioned above either make delivery impossible or delay delivery by more than three (3) months, B&T reserves the right to cancel the Agreement in full or in part. In this event, the Client is entitled to demand the return of payments rendered once goods already delivered have been returned to B&T. Claims for damages on behalf of the Client due to delays in delivery are hereby expressly excluded.

### 6. Transfer of Risks

Unless otherwise agreed by the parties, the risks of the goods pass to the Client EXW Thun, i.e. when the goods to be delivered are ready for collection (either by the Client or by third parties).

### 7. Return Policy

Goods delivered according to the Agreement may be returned only when given the prior written consent of B&T and only within 14 days of receipt. The goods are to be returned undamaged and in their original packaging. Both the invoice and the delivery note are to be enclosed. All costs incurred in returning the goods are borne by the Client. Should the return consignment not be complete, or should the original packaging be damaged, B&T reserves the right to either return the consignment or to invoice the Client an appropriate amount for the reconditioning work.

### 8. Notice of Defects and Complaints

The Client shall notify B&T in writing within five (5) days after receipt of the delivery of any issues it has with respect to defects, incompleteness of the delivery or incorrect deliveries provided that such issues can be established by a reasonable inspection of the goods delivered. Should the Client fail to inspect the goods within five (5) days after receipt, respectively fail to notify B&T with written notice of defects within the same time limit, the delivery shall be deemed accepted.

The Client acknowledges that deliveries are effective EXW Thun and that the Client is responsible for ongoing transportation (including insurance). This is also the case even when transportation and insurance have been organised by B&T. B&T is not liable for damage or loss during ongoing transport.

Where defects to the goods come to light subsequently and could therefore not be identified following a reasonable inspection of the goods, the Client shall give written notice to B&T of such defects immediately after discovery. Otherwise the goods delivered will be deemed accepted even in respect of such defects. The period for claiming such defect is based on details provided in the Product Specifications valid at the time of delivery, or a period of one year after receipt of the delivery, should the Product Specifications not provide for another period.

B&T is only liable for defects within the scope of the warranty provisions set forth below. Any other claims on behalf of the Client, in particular all types of claims for damages – including claims for damages for defects notified in time – are hereby excluded to the extent permitted by law.

### 9. Warranty and Liability

Warranty claims on behalf of the Client are to be explicitly declared as such. During the warranty period, B&T provides warranty cover solely for defects that arise as a result of faulty materials, construction errors or poor

## General Terms and Conditions

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workmanship. If a warranty claim is justified, B&T will, at its own discretion, either repair or replace the defective good. Costs incurred in transporting the defective good to B&T are borne by the Client. Spare parts fitted and replaced become the property of B&T.

Inasmuch as is legally permitted, any other liability of B&T is excluded, in particular liability for damages arising either directly or indirectly from the delivered good itself, from its use or from its defects.

Merchandise is covered by the warranty provisions of the manufacturer. Parts that are naturally subject to wear and tear, damage arising from insufficient maintenance work, non-compliance with operating regulations and cases of force majeure are all excluded from warranty cover. Warranty claims lapse if the Client itself or third parties alter or repair the delivered good without the prior written consent of B&T.

### 10. Retention of ownership

Until the purchase price (including any default interest) has been paid in full B&T shall retain ownership in the goods delivered. The Client hereby irrevocably authorises B&T to have the retention of ownership in the goods delivered entered in the relevant register at the Client's expense. With respect to the retention of title, the Client shall cooperate fully with B&T and, in particular, shall undertake all actions necessary or helpful for the registration.

Until ownership of the goods delivered is transferred in full to the Client, the Client holds the goods in trust on behalf of B&T and shall store the goods separately from its own and from those of third parties. The Client shall protect the goods delivered subject to retention of title against access of third parties, shall handle them with care and shall insure them properly at its own expense in favour of B&T against theft, fire and any other risk.

The Client is only permitted to sell objects subject to B&T's retention of title ("reserved items") in ordinary business transactions. In all cases, the Client shall ensure that ownership is not transferred to third parties until the purchase price has been paid in full. The Client is not authorised to pledge reserved items, to assign these as collateral to third parties or to make any disposition that would otherwise put B&T's property at risk. The Client hereby assigns all receivables arising or having arisen from the resale of reserved items to B&T. Until B&T revokes a transaction, which remains possible at all times, the Client shall collect receivables assigned to B&T in trust on behalf of B&T. In the event a transaction is revoked, B&T is authorised to collect the receivable itself.

### 11. Copyright

B&T retains the ownership and copyright to all information relating to the goods delivered such as drawings, drafts, diagrams and descriptions.

### 12. Data Protection

The Client notes with approval that B&T may gather and process client data as part of its contractual relationship. B&T treats client data as confidential and complies with the provisions of the Swiss data protection legislation. The Client agrees to B&T having to forward client data to third parties in Switzerland and abroad to obtain permits for the Client and is aware that such countries may not enjoy the same level of data protection as in Switzerland.

### 13. Limitation of B&T's further Liability

All Client claims, regardless of their legal basis, are exclusively regulated in these terms and conditions. In particular, all Client claims for damages, reduction, cancellation of or withdrawal from the Agreement (including errors) not expressly mentioned in these terms and conditions are excluded. The Client is not entitled to claim compensation for damage not directly related to the goods delivered, such as loss of orders, loss of profit and other indirect and direct damage.

### 14. Severability Clause

Should any of the provisions of these General Terms and Conditions be or become invalid or unenforceable in whole or in part, the validity of the other provisions hereunder shall remain unaffected. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision which comes as close as possible to the originally intended, also economically, purpose pursued by the replaced provision.

## General Terms and Conditions

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### 15. Applicable Law and Jurisdiction

With the exception of the retention of ownership defined in Article 10 of these General Terms and Conditions, the substantive law of Switzerland shall apply, upon exclusion of its conflict of laws provisions and any state treaties. With regard to the retention of ownership, the laws of the country shall apply in which the delivered goods are located when legal measures are set in motion.

Any legal dispute arising out of or in connection with this Agreement concluded between B&T and the Client or its later amendments, including its establishment, validity, binding effects, infringement or termination shall be heard in **Thun, Switzerland**. B&T however reserves the right to take any legal action against the Client in a competent court at the Client's business headquarters and to enforce the retention of ownership at the storage location of the reserved item.

These General Terms and Conditions supersede all older versions of B&T's General Terms and Conditions. In case of discrepancy between the German language original text and the English language translation, the German text shall prevail.

B&T AG  
3608 Thun, Switzerland

Thun, 10 February 2012