

General Terms and Conditions of Business of BURRI public elements Deutschland GmbH

1. Scope of application and choice of law

The following General Terms and Conditions of Business (GTCB) are applicable to all legal transactions between BURRI public elements Deutschland GmbH and customers, even if no further specific reference is made to them in subsequent business dealings, e.g. substitute deliveries, guarantees, repairs and alterations. **The customer accepts these GTCB when placing an order.**

Variations from these GTCB will not be valid unless confirmed in writing by BURRI public elements Deutschland GmbH. Different, conflicting or additional General Terms and Conditions of Business used by the customer will not form an integral part of the contract, even if acknowledged, unless their validity is expressly agreed in writing.

German law is applicable, excluding the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention). Unless these GTCB contain specific regulations, the provisions of German private law shall apply.

2. Conclusion of a contract

The notification of prices or other terms by BURRI public elements Deutschland GmbH, in particular via all catalogues, brochures, publications or other announcements, in writing, verbally or electronically, on data carriers or online, constitutes a simple invitation to request a quotation.

By placing an order, the customer submits its legally binding offer. The contract is formed by delivery of the order confirmation or shipment of the goods ordered by the customer. Order confirmation may be given in writing or by email.

Orders that differ from the specifications advertised by BURRI public elements Deutschland GmbH or that contain additions or changes made by the customer, will only be valid if they are expressly confirmed in the order confirmation. The colours printed in BURRI public elements Deutschland GmbH documentation are not binding.

Dimensions specified in the offer and order documentation of BURRI public elements Deutschland GmbH must **be checked by the customer**. Any errors or inconsistencies in the order confirmation must be reported immediately by the customer in writing. **Three business days** after receipt of the order confirmation by the customer, the contents of the order confirmation will be deemed to be approved by the customer. In the case of postal delivery, the order confirmation will be assumed to be received by the customer on the third business day after posting. The **order confirmation** is deemed to be a **promise** by the customer to pay the agreed purchase price, including any incidental costs not included in the order confirmation, e.g. installation costs, permit expenses and/or interest for late payment, etc.

3. Price

The price stated in the quotation is valid for 30 days and relates to the specified delivery date. Unless expressly stated otherwise, all prices quoted are **net, excluding VAT**, sales tax and other goods taxes. All other costs, e.g. for transport, insurance, customs as well as export, import or other necessary permits, will be billed separately. A standard packaging fee is charged and is shown in the order confirmation.

Purchase prices do not include the costs of preparing plans, delivery, installation or set-up. BURRI public elements Deutschland GmbH will arrange these additional services on request, but their costs are payable separately and will be listed separately in the order confirmation.

Prices for substitute deliveries are ex-works excluding incidental costs, e.g. dismantling, re-installation, transport, placement of necessary scaffolding, travelling ladders, cranes, skyworkers, etc. These costs will be borne by the customer.

4. Payment terms and direct consequences of default

Unless otherwise specified, invoices issued by BURRI public elements Deutschland GmbH are payable in full within **30 days of invoice date**. Payments may only be made with discharging effect to the head office of BURRI public elements Deutschland GmbH. The payment obligation ends only when payment is received in the business account designated by BURRI public elements Deutschland GmbH.

Agreements on **discounts and reductions** are only legally valid when recorded **in writing** and validly signed by BURRI public elements Deutschland GmbH.

If the customer falls into arrears with its payments (including instalments), and/or if a claim has to be asserted via enforcement or another legal process, any **discounts and reductions** granted or promised to the customer will not apply to the amounts still outstanding. This also applies if insolvency, debt rescheduling or bankruptcy proceedings are opened against the customer, or are not opened or are stopped due to insufficient assets, if the customer declares itself insolvent, stops its payments, or if other circumstances become known which indicate that the customer is insolvent or uncreditworthy. In addition, BURRI public elements Deutschland GmbH may withhold its services and deliveries or make them contingent on advance payments or guarantees.

If the customer fails to pay by the payment deadline, it will be required to reimburse BURRI public elements Deutschland GmbH's **debt recovery and collection expenses and/or debt enforcement costs**, to the extent incurred for the appropriate legal proceedings.

Specifically, the customer undertakes to reimburse the fees charged for the services of a collection agency. Any regulations on the maximum rates chargeable by such collection agencies shall be binding. If the creditor enforces the debt recovery procedure itself, the debtor undertakes to **pay €10.90** per reminder issued **and €5 per half-year for registration of the debt in the debt collection system**.

These regulations also apply if a longer period is set for payment or a grace period is granted, unless BURRI public elements Deutschland GmbH waives them in writing.

5. Contract cancellation

If one of the events listed in Clause 4 occurs, the customer defaults on its debt or otherwise breaches its contractual obligations, BURRI public elements Deutschland GmbH shall have the right to set an appropriate deadline for subsequent fulfilment or rectification of the breach, or have such deadline set by the relevant authority. If this deadline is not met, BURRI public elements Deutschland GmbH may continue to demand fulfilment plus compensation, but may instead, provided it declares this immediately, waive subsequent payment and either demand compensation for the loss incurred as a result of non-fulfilment or cancel the contract. If the customer is clearly insolvent, there is no obligation to set a grace period.

If the contract is rescinded, as well as having the **right to demand that the received goods be returned**, BURRI public elements Deutschland GmbH also has the option to request **flat rate compensation of 15% of the total outstanding gross invoice amount or reimbursement of the loss actually incurred as a result of cancellation of the contract**.

If the customer, without being entitled to do so, withdraws from the contract or requests its cancellation, BURRI public elements Deutschland GmbH has the option to insist on fulfilment of the contract or agree to cancel the contract. In the latter case, the customer is obliged to **return the goods received** and at the choice of BURRI public elements Deutschland GmbH, pay **flat-rate compensation of 15% of the total outstanding gross invoice amount** or **reimburse the loss actually incurred**.

6. Acceptance and transfer of risk

Under **Incoterms 2010 EXW**, product benefits and risks are transferred to the customer following handover to the carrier or collection by the customer. If BURRI public elements Deutschland GmbH provides services under a work contract, the work must be accepted by the customer; if acceptance does not take place, the time when the work is first used by the customer will be deemed to constitute acceptance. Following acceptance, the warranty under Clause 12 will apply accordingly.

7. Duty to inspect and duty to object

The products must be **inspected** by the customer **for defects immediately after receipt**. Any **defects** must be **reported** to BURRI public elements Deutschland GmbH **immediately in writing**. Hidden defects must be reported in writing as soon as they are discovered. If a **notice of defect is not filed or not filed in good time**, the **product is deemed to be approved**. In such cases warranty or compensation claims will be barred, including claims for damage caused by a defective product, as well as the right to voidability for error on the grounds of defects.

8. Creditor default

If the customer has not accepted the goods as agreed (creditor default), BURRI public elements Deutschland GmbH is entitled, after setting a new deadline to no avail, either to store the goods on its premises, for which a **storage fee of 0.1% of the gross invoice amount** will be billed per calendar day or part thereof, or **to store them at the cost and risk of the customer** in an authorised commercial warehouse. At the same time, BURRI public elements Deutschland GmbH is entitled either to insist on fulfilment of the contract or after setting a reasonable grace period of at least 2 weeks, **to cancel the contract and sell the goods elsewhere**. Clause 5 also applies *mutatis mutandis*.

9. Delivery deadlines and dates

The **delivery dates stated in the quote** are **non-binding guidelines**. BURRI public elements Deutschland GmbH makes every effort to adhere to the dates given. However, failure to do so will not entitle the customer to withdraw from the contract or claim damages or compensation of any kind. Cancelling the order due to late delivery is not permitted. If an order cannot be executed for reasons beyond the control of BURRI public elements Deutschland GmbH, it will be entitled to increase the stated **contract prices by any cost rises occurring in the interim**.

10. Place of performance

The place of performance is the head office of BURRI public elements Deutschland GmbH.

11. Minor changes to specifications

Minor or other **reasonable changes** for the customer to the performance and/or delivery obligation of BURRI public elements Deutschland GmbH are deemed to be **pre-approved**. This applies in particular to variations inherent in the actual product (e.g. dimensions, colour, wood and veneer pattern, grain and structure, etc.). Slight variations or differences in colour or quality, particularly in the shade of a paint, acrylic glass or fluorescent paint cannot be asserted as defects.

12. Warranty and guarantee

Unless otherwise agreed in writing or stated in the order confirmation, the warranty issued by BURRI public elements Deutschland GmbH is limited to **twenty-four months** after the delivery date. This warranty covers all **works and products manufactured by BURRI public elements Deutschland GmbH** that have become demonstrably unusable or damaged as a result of manufacturing or material defects. **Lighting and parts subject to wear and tear are not covered by the warranty.**

For products not manufactured by BURRI public elements Deutschland GmbH (**trade products**), **the warranty period is stated in the order confirmation**. Trade products are marked as such, either by the manufacturer's name or the manufacturer's logo. The warranty period for trade products **is 1 year** after the delivery date. The warranty period starts to run on the date of delivery of the product, without the need for acceptance or inspection by the customer.

Broken glass, cable fires and damage caused by natural hazards are not covered by the warranty.

Warranties are limited to repair; other claims by the customer for rescission or reduction under purchase or work contracts are excluded. BURRI public elements Deutschland GmbH is not obliged to reimburse expenditure incurred by the customer or a third party to rectify defects without the consent of BURRI public elements Deutschland GmbH.

BURRI public elements Deutschland GmbH guarantees that the delivered products meet the specifications explicitly stated in the order confirmation. Otherwise, the **warranty is limited to the maximum extent permitted by law**. In particular, the warranty does not cover damage attributable to the customer or third parties, namely damage caused by or due to the fact that the customer or a third party operating under the responsibility of the customer

- a) has treated the relevant products incorrectly;
- b) has used products without obeying statutory or official regulations or instructions of BURRI public elements Deutschland GmbH (in particular installation and operation information, operating regulations) and has ignored information in the data and installation sheets;
- c) has used products in unsuitable conditions, in particular in the presence of volatile chemicals, gases or fluids or outside the permitted operating parameters or application conditions;
- d) has mounted, handled, installed products incorrectly or carelessly, failed to carry out these operations according to the current state of the art, or failed to have the products used or installed by trained experts;
- e) has modified or repaired products without the prior written approval of BURRI public elements Deutschland GmbH;
- f) has worn products out as a result of incorrect, inappropriate or excessive use; and
- g) has stored products incorrectly.

The customer is equally liable for the actions or omissions of its agents as for its own actions or omissions.

13. Liability and compensation

BURRI public elements Deutschland GmbH is liable solely for damage caused by its own culpable and unlawful behaviour. Other liability is excluded to the extent permitted by law. This also applies to the personal liability of its employees, representatives and agents. In the event of damage during transport, assumption of liability by BURRI public elements Deutschland GmbH can only be considered if a record of the facts is submitted by the transport institution within five business days.

14. Indemnity

The customer will indemnify BURRI public elements Deutschland GmbH in full for all third party claims on first request.

15. Force majeure

Neither BURRI public elements Deutschland GmbH nor the customer will be liable for damage of any kind if difficulties arise which cannot be avoided despite reasonable care, regardless of whether such difficulties occur at the premises of BURRI public elements Deutschland GmbH, the customer or a third party. Such difficulties include epidemics, mobilisation, war, uprising, major malfunctions, accidents, labour disputes, delayed or defective incoming deliveries of necessary raw materials, semi-finished and finished products, unavailability of important workpieces, official actions or omissions, embargos, import or export restrictions, acts of God and events largely beyond the control of BURRI public elements Deutschland GmbH or the customer.

Payments should not however be withheld or delayed by invoking these provisions after delivery has been made. Both parties will always immediately take all sensible and reasonable measures to prevent damage or if this is not possible, to minimise it.

16. Permits

The validity of the purchase contracts depends on the issue of all necessary permits by authorities or third parties. Obtaining such permits is always a **matter for the customer**. Required modifications, including those necessitated by official regulations, will not release the customer from its acceptance and payment obligation. Additional costs incurred as a result shall be borne exclusively by the customer.

17. Copyright

The rights to plans, sketches, other technical documentation, prototypes, models, drafts, designs, catalogues, brochures, diagrams, films, photos, design drawings, instructions, manuals, cost estimates, tools, EDP data and data carriers, etc. produced by BURRI public elements Deutschland GmbH remain the property of BURRI public elements Deutschland GmbH. The customer will not receive any usufructuary or exploitation rights thereto of any kind whatsoever. Transfer, duplication and exploitation of these rights (including the use of EDP tools) and disclosure of their contents to third parties are not permitted, unless these rights have been expressly granted in writing by BURRI public elements Deutschland GmbH. Breaches of this provision constitute abuse and will be liable to compensation.

If such drawings, drafts, EDP data, models, etc. belong to the customer however, the customer will indemnify BURRI public elements against all and any third party claims.

18. Manufacturer's notice

BURRI public elements Deutschland GmbH is authorised to attach a manufacturer's notice to goods.

19. Retention of title, builder's lien, assignment of receivables

BURRI public elements Deutschland GmbH retains ownership of all delivered products until all claims have been satisfied in full. Where the applicable law calls for entry in a retention of title register or a similar registration obligation, BURRI public elements Deutschland GmbH is expressly authorised to undertake this entry on its own initiative. This also applies if the relevant federal state law links the validity of retention of title to other or different conditions. Where the consent of the debtor is required, this is deemed to be given.

If a product is used for structures or other works on a site, BURRI public elements Deutschland GmbH has the right, where the applicable law so provides, right to register a builder's security within the meaning of Section 648a German Civil Code (BGB) on said site. When requested to do so, the customer must provide the company with the information required for this purpose immediately and free of charge, and where necessary assist with registration of the builder's lien, if BURRI public elements Deutschland GmbH requests it to do so. This also applies to the registration of similar country-specific statutory mortgages or the provision of other collateral used to preserve the financial value embodied in the sold product for the security and realisation requirements of BURRI public elements Deutschland GmbH.

The costs incurred by creating such liens and similar collateral shall be borne by the customer.

Resale of the product before the full purchase price has been paid is only permitted if this has been notified to BURRI public elements Deutschland GmbH, with details of the name and full business address of the second buyer, and provided BURRI public elements Deutschland GmbH has agreed to the resale. This also applies to onward processing. The payment from resale or processing shall be due exclusively to BURRI public elements Deutschland GmbH or, if payment is deferred, the purchase price or work contract receivable will be deemed to be assigned to BURRI public elements Deutschland GmbH for payment purposes. The latter is authorised to notify the second buyer or customer of such assignment at any time.

If the customer falls into arrears with its payments to BURRI public elements Deutschland GmbH, it must separate the proceeds received by it from resale or onward processing.

In the event of resale or onward processing of the product, the customer must **transfer the warranty exclusions contained in these GTCB to its buyer.**

This also applies *mutatis mutandis* to assignment of collateral and pledging of the product. If the product is destroyed before the purchase price has been paid, or is damaged or suffers any other occurrence that justifies an insurance claim, the customer is obliged to make all necessary arrangements to uphold this claim and do nothing to jeopardise it. If the applicable law so provides, claims against the insurer take the place of the product (to the appropriate extent in the case of a simple loss of value). If assignment is required for this, the customer herewith agrees to this and will make the necessary arrangements to ensure that such assignment is valid. Enforcement of retention of title, lien or other similar collateral will not entail cancellation of the contract. If goods are returned, BURRI public elements Deutschland GmbH is entitled to charge for transport and handling expenses incurred.

If third parties gain access to goods that are covered by a retention of title clause, in particular through attachments, **the customer undertakes to refer to BURRI public elements Deutschland GmbH's ownership, and to notify the latter without delay. The customer bears the full risk for goods covered by a retention of title clause**, in particular the risk of destruction, loss, deterioration or loss of value.

20. Retention

If the customer has a legitimate complaint (save in cases of cancelled transactions), **it is not entitled to retain the full gross invoice amount, but only a reasonable portion thereof.**

21. Data protection, change of address

The customer gives its permission for **personal data** collected in connection with its order to be electronically **stored and processed** by BURRI public elements Deutschland GmbH. The customer is obliged to **notify changes of residential and/or business address**, until the transaction covered by the contract has been fully completed by both parties. If the customer **fails to give such notification, notices sent to the last known address will be deemed to be received.**

22. Non-set off and non-assignment clause

Credit balances of BURRI public elements Deutschland GmbH cannot be set off against counterclaims of the customer. Claims against BURRI public elements Deutschland GmbH shall not be assigned without express prior consent.

23. Modification of contract clauses

BURRI public elements Deutschland GmbH reserves the right to **change these GTCB at any time**. Amendments and/or additions to these GTCB must be made in **writing**. The version valid at the time the contract is concluded will prevail.

24. Safeguard clause

Should individual provisions of the contract with the customer, including these GTCB, become invalid in whole or in part, this will not affect the validity of the remaining provisions. The wholly or partially invalid provision will be replaced by a provision which comes closest to the commercial intent of the invalid provision.

25. Jurisdiction

The ordinary courts in the city of Mönchengladbach (Germany) will have exclusive jurisdiction over all disputes.

Mönchengladbach, 14. September 2015