



General terms of sale and delivery

GTS DE 2024-11 DE

A. Basics

Section 1 Scope of application

(1) These General Terms and Conditions of Sale and Delivery (GTS) apply to the contractual relationships for the sale and delivery of goods as well as the provision of related services and comparable service contracts between our contractual partner ('Customer') and the

1. Bender Industries GmbH & Co. KG, Grünberg,
2. Bender Immobilien und Service GmbH & Co. KG, Grünberg,
3. Bender GmbH & Co. KG, Grünberg,
4. Bender Engineering GmbH, Dresden,
5. Bender Smart Charging GmbH, Berlin,
6. BSK Büro für Datentechnik GmbH, Buseck,

if the customer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law within the meaning of Section 310 (1) BGB. The contractual partner of the supplier and 'Bender' ('we') within the meaning of these Terms and Conditions of Purchase is the company of the Bender group of companies named in the respective order. For the applicability of these GTS, it is irrelevant whether Bender manufactures the contractual items itself or purchases them from suppliers.

(2) Unless otherwise agreed, these GTS in the version current at the time of the order shall also apply as a framework agreement (Section 305 (3) BGB) for subsequent service contracts between us and the same customer without us having to refer to the GTS again.

Section 2 Exclusion of conflicting terms and conditions

Bender's range of services and our contractual conditions are to be understood as a complete package. These GTC therefore apply exclusively to our services. Supplementary or deviating terms and conditions of the customer shall only become effective if we expressly agree to them in writing, otherwise they shall remain non-binding for us.

Section 3 Written form

Service contracts with the customer, including contract amendments, ancillary agreements and all legally relevant declarations in connection with the contract, must be in writing or confirmed in writing. Communication by e-mail or signature by means of a simple electronic signature shall suffice to

fulfil the written form requirement within the meaning of these GTC, unless the parties have expressly agreed otherwise and there are no mandatory statutory formal requirements to the contrary.

Section 4 Binding period

(1) If an offer is labelled by us as binding or is linked to a specific acceptance period, the corresponding service contract is concluded with the customer's order.

(2) If our offer is not labelled as binding or does not contain a specific deadline for acceptance, the customer's order shall be deemed an application for acceptance of our offer. We can accept the application within ten working days of receipt. This is usually done by a written declaration to the customer (order confirmation, notification of readiness for collection or dispatch), otherwise at the latest by the actual provision of the service.

B. Prices and terms of payment

Section 5 Prices

Unless expressly stated otherwise, the prices stated in the service contract are net prices. They are exclusive of statutory value added tax, any other public-law fees and charges and otherwise 'EXW Incoterms (2020)' (see Section 10 paragraph 1).

Section 6 Cost adjustments

For services rendered three months or more after the conclusion of the contract, we reserve the right to demand reasonable price changes due to changes in labour, material or distribution costs. This shall not apply if the customer has expressly agreed a fixed price with us.

Section 7 Payment deadline

(1) Our invoices are payable within 14 calendar days of delivery and receipt of invoice to the bank account stated on the invoice without deduction. The receipt of our notification of readiness for collection by the customer (which we can combine with the invoice) or - if dispatch has been agreed - our handing over of the goods to the carrier shall also be deemed to be delivery. Insofar as acceptance has been agreed or we owe services such as assembly, installation, commissioning or furnishing, the payment period shall only commence upon acceptance or completion of these services.





(2) If we wish to carry out a delivery only against a down payment or advance payment, we shall declare a corresponding reservation at the latest with the order confirmation.

Section 8 Offsetting and retention rights

The customer may only assert offsetting or retention rights with legally established or undisputed counter claims arising from the same contractual relationship. His rights in the event of defective performance by us remain unaffected.

Section 9 Endangerment of solvency

If it becomes apparent after conclusion of the contract that our claim for payment is jeopardised by the customer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (Section 321 BGB). In the case of contracts for the manufacture of non-fungible goods (customised products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

C. Delivery

Section 10 Delivery arrangements

(1) Our deliveries are subject to 'EXW Incoterms (2020)' in relation to the warehouse or factory from which we deliver. At the customer's request and expense, we will also dispatch the goods to another destination (sale to destination). In case of doubt, we shall determine the type of dispatch (packaging, dispatch route, transport company).

(2) If a partial delivery can be used by the customer within the scope of the contractual purpose, the provision of the remaining services is ensured and the customer does not incur any significant additional costs as a result of a partial delivery - or, if this is the case, we agree to bear these costs - we may also divide a delivery into several partial deliveries.

(3) Our suppliers and subcontractors are not vicarious agents within the meaning of Section 278 BGB.

Section 11 Timeliness of service

(1) As long as we have not expressly promised fixed delivery times, delivery times and dates promised by us are only approximate.

(2) Performance deadlines shall be automatically extended to a reasonable extent if the customer does not fulfil his own obligations towards us in good time or fails to cooperate as required (for example, by incomplete provision of documents to be provided or lack of technical or organisational prerequisites for the assembly, installation or mounting of ordered items). If our performance is delayed for reasons for which the customer is responsible, we shall also be entitled to demand compensation for the resulting damage, including our additional expenses (such as storage costs).

(3) If we are unable to meet agreed performance dates for reasons for which we are not responsible, we shall inform the customer of this circumstance immediately and state the expected new date. If we are also unable to fulfil this due to non-availability, we are entitled to withdraw from the contract in whole or in part; we will then refund any purchase price already paid to the customer without delay. Non-availability in the aforementioned sense is given, for example, if we are not supplied or not supplied properly by our supplier despite a congruent hedging transaction with our supplier, if there are other disruptions in the supply chain (for example due to force majeure) or if we are not obliged to procure in individual cases.

Section 12 Transfer of risk

In principle, the risk of accidental loss and accidental deterioration of the goods shall pass to the customer when the goods are handed over. If software is made available via electronic communication media (e.g. via download option), the risk is transferred as soon as the software leaves our sphere of influence. In the case of sale by dispatch, the risk of accidental loss of the goods, accidental deterioration and the risk of delay shall pass to the customer when the goods are handed over to the forwarding agent, carrier or other person appointed to carry out the dispatch. If acceptance has been agreed, this shall be decisive for the transfer of risk; the statutory provisions of the law on contracts for work and services shall apply accordingly. If the customer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

Section 13 Retention of title

(1) We reserve title to the goods sold until full payment of all our current and future claims arising from the service contract and the ongoing business relationship (together 'secured claims').

(2) The customer may neither pledge the items subject to retention of title to third parties nor assign them as security until the secured claims have been paid in full. He must inform us immediately if an application is made to open insolvency proceedings against his assets or if third parties otherwise seize the goods belonging to us (e.g. by attachment).

(3) As long as ownership has not been transferred to him, the customer shall store the delivered goods for us free of charge, treat them with care and insure them at his own expense against theft, fire and water damage at replacement value. The customer shall carry out due maintenance and inspection work (this does not include fulfilment or supplementary performance work to be carried out by us) at his own expense in a timely and professional manner.

(4) If the customer acts in breach of contract, in particular if he fails to pay the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions or to demand the return of the goods on the basis of the retention of title. The request for handover does not at the same time contain a declaration of cancellation; we are rather entitled to merely demand the return of the goods and reserve the right to withdraw from the contract. If the customer does not pay the purchase price due, we may only assert these rights if we have previously set the customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(5) The customer is authorised to resell or process the goods subject to retention of title in the ordinary course of business until revoked in accordance with clause 3. The following applies:

1. The products of our goods created by combining, mixing or processing are subject to retention of title at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with items of third parties, their right of ownership remains in force, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined items. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.
2. The customer hereby assigns to us as security any claims against third parties arising from the resale of the goods or products in total or in the amount of our possible co-





ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the customer stated in paragraph 2 shall also apply with regard to the assigned claims.

- 3. The customer remains authorised to collect the claim in addition to us. As long as the customer fulfils his payment obligations to us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right in accordance with paragraph 4, we undertake not to collect the claim. If we assert the exercise of a right in accordance with paragraph 4, we may require the customer to disclose the assigned claims and their debtors and to provide all information necessary for collection, hand over the relevant documents and notify the debtors (third parties) concerned of the assignment. In this case, we are also entitled to revoke the customer's authorisation to resell and process the goods subject to retention of title.
4. If the realisable value of the securities exceeds our claims by more than ten percent, we shall release securities of our choice at the customer's request.

D. Performance disruptions

Section 14 General warranty for defects

(1) The statutory provisions shall apply to the customer's rights in the event of material defects and defects of title, including incorrect or short deliveries, defective instructions, defective assembly and similar services, unless otherwise or additionally stipulated in these GTS.

(2) The customer is responsible for assessing the suitability of the services ordered for the purposes pursued by him. Our liability for defects is based on the contractual agreements on the quality of the services and the presumed contractual use as well as the product descriptions published by us at the time of conclusion of the contract.

(3) For goods with digital elements or other digital content, please note that we are only obliged to provide and update the digital content if this is expressly stated in a contractual quality agreement in accordance with paragraph 2. We accept no liability for public statements made by the manufacturer or other third parties.

(4) We shall not be liable for defects which the customer is aware of or is grossly negligent in not being aware of at the time of conclusion of the contract in accordance with Section 442 BGB.

(5) The customer's claims for defects presuppose that the customer has fulfilled his inspection and notification obligations in accordance with Sections 377, 381 HGB (Commercial Code). If our performance consists of items intended for installation, assembly or other further processing, the inspection must be carried out immediately prior to processing. If a defect is discovered during delivery, inspection or at a later point in time, we must be notified immediately in writing. Obvious defects (Section 377 (1) HGB) must be reported within five working days of delivery, non-recognisable defects (Section 377 (2) and (3) HGB) within three working days of their discovery. Failure to properly fulfil the obligation to inspect and give notice of defects shall lead to the exclusion of our liability for defects in accordance with the statutory provisions. If the goods sold were intended for further processing, this shall also apply if the defect only became apparent after the corresponding processing as a result of non-compliance with the obligation to inspect. In this case, the customer is not entitled to compensation for the installation and dismantling costs.

(6) If there is a warranty claim due to defective goods, we can provide subsequent fulfilment at our discretion by remedying the defect (subsequent improvement) or delivering a defect-free item (subsequent delivery). If the type of subsequent fulfilment chosen by us is unreasonable for the customer due to the circumstances of the individual case, the customer may refuse it. We in turn reserve the right to refuse subsequent fulfilment under the statutory conditions. In addition, we are entitled to make subsequent fulfilment dependent on the customer paying the purchase price due - whereby the customer has the right to withhold a reasonable part of the purchase price in relation to the defect.

(7) The customer must give us the necessary time and opportunity for subsequent fulfilment. Rejected goods must be made available to us for inspection purposes or access to them must be provided. If we provide subsequent fulfilment by delivering a defect-free item, the replaced defective item must be returned to us in accordance with the statutory provisions.

(8) If there is a defect, we shall reimburse the customer in accordance with the statutory provisions and these GTS for the necessary expenses incurred for the inspection and subsequent performance (transport, labour, material and, if applicable, dismantling and installation costs, provided that we were also originally obliged to install the goods). If the request to remedy the defect was unjustified and the customer knew or could have recognised that there was in fact no defect, we may demand reimbursement of the expenses incurred by us.

(9) The customer has the right to rectify a defect himself and to demand reimbursement of the expenses objectively required for this if this is necessary for urgent reasons (e.g. to avert a risk to operational safety or other disproportionate damage). We must be informed immediately of any self-performance. The right to self-remedy is excluded if there is a case in which we would be entitled to refuse subsequent fulfilment in accordance with the statutory provisions.

(10) In accordance with the statutory provisions, the customer may, at his discretion, either withdraw from the contract or reduce the purchase price if a deadline set by him for subsequent fulfilment has expired unsuccessfully or is dispensable in accordance with the statutory provisions. However, the customer shall have no right of cancellation in the event of a minor defect.

(11) Claims for damages or claims for reimbursement of futile expenses by the customer (Section 284 BGB) shall only exist in accordance with Section 16 (compensation for damages) and Section 17 (limitation period), even in the event of a defect.

(12) An unconditional acceptance despite defects known to the customer also leads to the loss of the claims for damages specified in Sections 634 No. 4, 437 No. 3 BGB. This shall not apply in cases of our assumption of a quality guarantee or our fraudulent concealment of a defect.

Section 15 Warranty for property rights and copyrights

(1) We guarantee that our products are free from industrial property rights or copyrights of third parties in the countries of the European Union and the countries in which we manufacture them or have them manufactured. Each party shall immediately notify the other party in writing if claims are asserted against it due to the infringement of such rights.

(2) Claims of the customer for infringement of industrial property rights or copyrights of third parties are excluded if this infringement is based on an instruction of the customer,





an unauthorised modification or non-contractual use of the product by the customer.

(3) In the event that our product infringes an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, modify or replace it in such a way that the rights of third parties are no longer infringed, but the product continues to fulfil the contractually agreed functions, or procure the right of use for the customer by concluding a licence agreement. If we fail to do so within a reasonable period of time, the customer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately.

Section 16 Liability for damages

(1) We shall be liable for claims arising from the breach of contractual and non-contractual obligations in accordance with the statutory provisions, unless otherwise or additionally stipulated in these GTS.

(2) We shall be liable without limitation for damages based on intentional or grossly negligent breach of duty by us or one of our legal representatives or vicarious agents, regardless of the legal grounds.

(3) We shall be liable for damages based on a simple or slightly negligent breach of duty by us or one of our legal representatives or vicarious agents, subject to a legally milder standard of liability (such as for care in our own affairs or insignificant breaches of duty),

- 1. unlimited for damages resulting from injury to life, limb or health;
- 2. limited to compensation for the foreseeable, typically occurring damage for damages resulting from the breach of a material contractual obligation. This refers to those obligations whose fulfilment is essential for the proper performance of the contract and on whose compliance the customer relies and may rely.

(4) The limitations of liability pursuant to paragraph 3 shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the contractual services. All claims for which statutory liability is mandatory, for example under the German Product Liability Act, also remain unaffected by the limitations of liability.

(5) The customer may only withdraw from or terminate the contract due to a breach of duty that is not attributable to a defect if we are responsible for the breach of duty.

(6) A free right of cancellation of the customer (in particular in accordance with Sections 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences apply.

Section 17 Limitation period

(1) The general limitation period for all claims - including non-contractual claims - arising from material defects or defects of title is one year, in deviation from Section 438 (1) No. 3 BGB. This shall not apply to claims for damages by the customer in accordance with Section 16 paragraph 2 (wilful or grossly negligent breach of duty by us), Section 16 paragraph 3 no. 1 (damages resulting from injury to life, limb or health) and Section 16 paragraph 4 (in the event of fraudulent concealment of a defect or in the event of mandatory statutory liability); in these cases, the respective statutory limitation period shall apply. The period pursuant to sentence 1 shall commence upon delivery or, if acceptance has been contractually agreed, upon acceptance.

(2) If the service is a building or an item that has been used for a building in accordance with its normal use and has

caused its defectiveness (building material), the statutory limitation period pursuant to Section 438 Para. 1 No. 2 BGB shall apply. Other special statutory provisions on the limitation period, in particular Section 438 Para. 1 No. 1, Para. 3, Section 444 and Section 478 Para. 2 in conjunction with Section 445b BGB, shall also remain unaffected.

E. Obligation to co-operate

Section 18 Obligation to provide information on product safety measures

If official measures are taken at or against the customer which affect the goods delivered by us (in particular product safety measures such as the ordering of a recall or preliminary measures) or if the customer considers such measures of its own (in particular a report to a market surveillance authority or a recall), he shall inform us immediately. The same shall apply if the customer learns of such measures taken by his customers concerning goods supplied by us.

Section 19 Non-disclosure

(1) The customer shall treat as confidential all circumstances which it receives or becomes aware of from us or via us in connection with the service contracts concluded. This applies in particular to all information that is marked as confidential or is recognisable by its nature as a trade secret. Reverse engineering is not permitted and does not constitute authorised knowledge. The customer shall only disclose the confidential circumstances to those employees or third parties who absolutely need to know them in order to provide the service. Furthermore, he shall not exploit, reproduce or modify them and shall take appropriate precautions against unauthorised access. The confidentiality obligation shall not apply to information which is in the public domain without this being due to a breach of contract by the customer or which was received from a third party who was authorised to disclose it. Whoever invokes this exception bears the burden of proof.

(2) Materials and documents provided to the customer, including all copies made by the supplier, shall be returned to us at our request or destroyed or deleted, unless they are still required to fulfil statutory retention obligations or for the performance of the contract.

F. Special conditions for software

Section 20 Subject of these conditions

The conditions in this Section F (Special Conditions for Software) supplement our GTS and apply to the provision of software to the customer if it is embedded in our products or if we provide it to our customers independently together with our products. In the event of contradictions with the GTC, the special terms and conditions for software shall take precedence as the more specific provision.

Section 21 Integration of company labelling on behalf of the customer

If the customer wishes to integrate his trademarks, logos and other word and image elements (labelling) into the software, he grants us and our affiliated companies a non-exclusive, worldwide, non-transferable, irrevocable, perpetual and royalty-free right to use the labelling in unaltered form within the software and the associated documentation, but exclusively limited to the purpose of integrating and displaying the labelling in the user interface of the software and software documentation provided to him.





Section 22 Rights of use for software

(1) If the customer is an authorised dealer for our products who acts on the basis of an authorised dealer agreement, we grant him the non-exclusive right,

1. to distribute the software in accordance with the authorised dealer agreement in the agreed territory in the form provided by us (embedded, stand-alone or in another form);
2. grant companies or organisations that use or intend to use the software for their own business purposes the rights to use the software in unmodified form and in accordance with the terms of the authorised dealer agreement for their own business purposes.

(2) We only provide software in machine-readable form (object code). There is no entitlement to the release of the source code.

(3) Subject to the provision in Section 69e UrhG (decompilation), the customer is not authorised to modify, decompile, translate or isolate parts of the software. The customer may not remove alpha-numeric or other identifiers from the data carriers and must transfer these identifiers unchanged to each backup copy.

(4) For software to which we only hold derived rights of use and which is not open source software (third-party software), the provisions of this Section 22 shall be supplemented and replaced by the terms of use agreed between us and our licensor, insofar as these relate to the customer Section 22 (such as an end user licence agreement); we will inform the customer of such conditions and make them available to him on request.

(5) With respect to open source software, the terms of use for the underlying open source software supersede the provisions of this Section 22. We shall inform the authorised dealer of the existence of open source software and the associated terms of use and shall make these terms of use available to the customer or provide them to the customer if this is required under the terms of use.

Section 23 Software defects

(1) Software shall only be deemed defective if the customer can prove reproducible deviations from the specifications. A defect does not exist if it does not occur in the latest version made available to the customer (including updates, upgrades and patches) and the customer can reasonably be expected to use this version (this is the case within three months of the latest version being made available to the customer).

(2) Notification of defects by the customer (Section 14 paragraph 5) must be made immediately in writing. The defects and the relevant data processing environment must be described as precisely as possible.

(3) No claims for defects exist in the case of

1. minor deviations from the agreed features;
2. only minor impairment of utilisation;
3. damage due to special external influences that were not foreseeable under the contract;
4. changes or additions made by the customer or third parties and their consequences;
5. lack of compatibility of the software provided with the customer's data processing environment.

(4) Unless we decide otherwise, we will rectify a software defect as follows:

1. We shall provide a replacement by way of an update or upgrade of the software, insofar as these are available to us or can be procured at reasonable expense for us, the

customer. If the customer has been granted a multiple licence, he can create a corresponding number of copies of the update or upgrade.

2. Until an update or upgrade is provided, we shall provide the customer with an interim solution to circumvent the defect, provided that this does not cause unreasonable expense and the customer would otherwise not be able to complete work that cannot be postponed due to the defect.
3. If the data carriers or documentation provided prove to be defective, the customer's right shall be limited to demanding a defect-free version from us as a replacement.
4. We have the right to choose whether the defect is rectified at the customer's premises or at our own location. If we decide to rectify the defect at the customer's site, the customer must ensure that the necessary hardware and software as well as the required operating conditions (including the necessary computing time) and qualified operating personnel are available. The customer shall provide us with the documents and information available to him and necessary for the rectification of the defect.
5. The customer shall provide us with access for remote maintenance at our request.

G. Special conditions in connection with Belarus and Russia

Section 24 Export ban

(1) The customer is prohibited from exporting or re-exporting the goods made available to him by us, insofar as they fall under

1. Art. 12g of Regulation (EU) 833/2014 or the scope of application of another legal provision prohibiting the export or re-export of the goods sold to the customer to the Russian Federation, to sell, export or re-export them directly or indirectly to Russia or for use in Russia;
2. Art. 8g of Regulation (EC) No 765/2006 or fall within the scope of any other legal provision prohibiting the export or re-export of the goods sold to the customer to Belarus, to sell, export or re-export directly or indirectly to Belarus or for use in Belarus.

(2) The customer is also prohibited from using the

1. intellectual property rights
2. or trade secrets sold, licensed or otherwise transferred to him by us, as well as access or re-use rights granted to him to materials or information protected by intellectual property rights or as trade secrets in connection with goods subject to Art. 12g of Regulation (EU) No. 833/2014,

in connection with such goods, if these goods are intended directly or indirectly for sale, delivery, transfer or export to Russia or for use in Russia. The customer is obliged to prohibit any possible sub-licensees of such intellectual property rights or trade secrets from such use as well.

Section 25 Obligations of the customer to co-operate

(1) The customer shall make every effort to ensure that the purpose of Section § 24 and any other sanction regulations is not undermined by third parties downstream in the commercial chain, including potential resellers.

(2) The customer undertakes to establish and maintain adequate monitoring mechanisms to detect any behaviour in the downstream third party supply chain that would undermine the purpose of the export ban under Section § 24.





(3) The customer shall inform us immediately of any problems in the fulfilment of its obligations under this section C and shall provide us with information regarding compliance with its obligations upon simple request.

Section 26 Legal consequences of violation

Breaches by the customer of Section § 24 and Section § 25 shall constitute a breach of material contractual obligations, which shall entitle us to take appropriate measures in this regard, including

1. rescission or cancellation of the underlying service contract; and
2. – if the breach of Section § 24 or Section § 25 is culpable – a contractual penalty of up to five per cent of the contract value or the sold, transferred, exported or re-exported goods, whichever is higher.

H. Place of fulfilment, choice of law, forum

Section 27 Place of fulfilment

The place of fulfilment for our services is the warehouse or factory from which we deliver. This also applies to subsequent

fulfilment. Insofar as we are contractually obliged to carry out assembly, erection/installation, installation or the like at another location, this location shall be the place of fulfilment and subsequent performance.

Section 28 Governing law

(1) The business relationship between us and the customer shall be governed by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and legal norms that refer to another legal system.

(2) In the event of additional translations into other languages, the German version of these terms and conditions shall prevail in case of doubt.

Section 29 Forum

The place of jurisdiction for disputes arising from or in connection with the business relationship between us and the customer, irrespective of the legal grounds, shall be Gießen. However, we are also entitled to appeal to the court responsible for the customer's place of business. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by this provision.

Bender Industries GmbH & Co. KG
Legal & Compliance
Londorfer Straße 65 | 35305 Grünberg | +49 6401 8070 | www.bender.de

