

General Terms and Conditions of Sale (as of 27 May 2019)**§ 1 Introductory provisions**

- (1) Battermann & Tillery GmbH (hereinafter Battermann & Tillery) does not sell in its own name, but rather on behalf of third parties (hereinafter Sellers). These General Terms and Conditions of Sale (hereinafter GTS) shall apply to such sales, particularly salvage sales, including the corresponding pre-contractual measures Battermann & Tillery carries out on behalf of Sellers. Buyers, as defined by these GTS, are also potential Buyers who merely submit a bid without being awarded the sale. These GTS shall govern the conclusion and content of the sales contract between the Seller and the Buyer.
- (2) The bidder (hereinafter Buyer) accepts these conditions by submitting a bid.
- (3) Terms and conditions of the buyer which exclude or deviate from these GTS shall not apply.
- (4) The current version of these GTS shall also apply to subsequent orders and to permanent business relationships.
- (5) Individual contractual agreements take precedence over these GTS. However, agreements on changes or deviations from these GTS shall be made in writing to be effective.
- (6) References in these GTS to the supplementary validity of statutory provisions have only clarifying significance. The statutory provisions shall also apply without corresponding clarification insofar as they are not directly amended or expressly excluded in these GTS or otherwise by agreement between the contracting parties.

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- (7) These GTS shall apply only to entrepreneurs pursuant to § 14 of the German Civil Code. A sale to consumers pursuant to § 13 of the German Civil Code shall not occur. Consumers shall not be entitled to place bids. Battermann & Tillery shall verify the entrepreneurial status of the Buyer before the submission of a bid. The Buyer shall have to prove its entrepreneurial status upon request.
- (8) Insofar as compliance with the written form is required in these terms and conditions, compliance with the text form pursuant to § 126b of the German Civil Code shall also suffice.

§ 2 Subject matter of the contract, role of Battermann & Tillery

- (1) Battermann & Tillery conducts the sale of the items on behalf of, in the name of and for the account of the Seller. Battermann & Tillery shall act exclusively as a representative of the Seller throughout the entire execution of the sales contract. The naming of the Seller is guaranteed and occurs at the latest upon the issuance of the invoice in the case of the conclusion of a sales contract. The purchase contract for the items is concluded directly between the Seller and the Buyer. There is no contractual relationship between the Buyer and Battermann & Tillery.
- (2) Battermann & Tillery provides its services exclusively for the Seller. The Buyer shall not be included in the scope of protection of the contractual relationship between Battermann & Tillery and the Seller. Justification of trust in the services of Battermann & Tillery shall not be a part of the contractual services.

§ 3 Conclusion of the sales contract

- (1) The tender for the damaged goods does not constitute a binding offer to conclude a sales contract. There is no entitlement to admission to the invitation to tender. By placing a bid, the Buyer submits a binding and irrevocable purchase offer for the goods offered on the basis of these GTS. Bids must be submitted within the bidding period of the relevant invitation to tender. Only the system time clock of Battermann & Tillery shall be decisive for determining the closing time, which ends the respective term. Battermann & Tillery as representative of the Seller reserves the right to shorten or extend the duration of tenders at its own discretion or to cancel tenders without concluding a contract.
- (2) The purchase bids must be submitted to Batterman & Tillery as the Seller's representative in writing (by email, via the tender platform or fax) in due time. Bids by telephone shall not be accepted. The decision to accept the bid (hereinafter Acceptance) shall be taken after the evaluation of the bids has been completed, usually 24 hours (one business day), but no later than five business days after the end of the tender period. Upon receipt by the Buyer of the notification of the Acceptance, a sales contract is concluded between the Seller and the Buyer on the agreed upon terms on the basis of these GTS.
- (3) The highest bidder shall not be entitled to the issuance of Acceptance of said bid. Battermann & Tillery reserves the right to decide freely on the issuance of Acceptance and expressly reserves the right to refrain from the issuance of Acceptance, particularly if the highest bid does not meet the price expectation. Battermann & Tillery shall be entitled to withdraw the goods or parts thereof from sale for any reason whatsoever up until the issuance of Acceptance.

§ 4 Information on the object of the sale, exclusion of warranty

- (1) The goods in question consist of used goods or goods from damage events, which is why they are not equivalent to new products.

- (2) The description of the damage refers to known existing damage. The representations and pictorial descriptions are non-binding. Unless expressly agreed otherwise, they do not constitute guarantees pursuant to § 443 of the German Civil Code nor agreements on quality pursuant to § 434 1 p. 2 of the German Civil Code. This applies particularly to dimensions, weights, completeness, origin and condition. The information concerning the impairments does not include the statement that the goods are otherwise free of defects. The goods offered for sale may be inspected and examined by the Buyer. It is strongly discouraged to submit a bid without prior inspection.
- (3) Battermann & Tillery shall not assume any obligations of its own towards the Buyer. Battermann & Tillery shall not be obligated vis-à-vis the Buyer to inspect or examine the goods. Descriptions of the goods by Battermann & Tillery are made to the best of Battermann & Tillery's knowledge. A warranty for the correctness of the information from the Seller and third parties shall not be assumed.
- (4) The goods shall be sold in the condition which they were in at the time of the issuance of Acceptance, under caveat emptor. This caveat shall not apply if a defect has been fraudulently concealed by the Seller or a guarantee has been given for the quality of the object of the sale. The liability for damages is assessed pursuant to § 7.
- (5) Insofar as weight determinations are necessary or prescribed, the resulting costs shall be borne by the Buyer. Battermann & Tillery shall be entitled to demand weighing by an explicitly accredited inspector. Vehicle/wagon weighing shall be accepted only with the prior consent of Battermann & Tillery.

§ 5 Sales price, payment

- (1) The sales price shall be exclusive of the value-added tax applicable at the time of delivery.

- (2) All taxes, customs duties and import permits of any kind whatsoever shall be borne by the Buyer.
- (3) The Buyer shall be obligated to pay the sales price for the goods within 48 hours after the Acceptance and receipt of invoice. In the case of perishable goods, the sales price must be paid within 24 hours of the Acceptance. Payment deadlines are agreed upon and fixed. Payment must be made to the account specified in the invoice. If the Buyer does not pay within the aforementioned period, it shall be in default. All transfer charges and the like shall be borne by the Buyer. The goods are generally not transferred until after receipt of the funds in the account indicated in the invoice. If the sales price is not credited to the account within five business days after the Acceptance, the Seller may withdraw from the the contract. The assertion of claims for damages in accordance with the statutory provisions shall remain unaffected.
- (4) The parties agree that invoices will be issued only in electronic form in PDF format.
- (5) The Buyer shall be entitled to set off and withhold funds only if its counterclaims have been legally established or are undisputed.
- (6) If the Buyer no longer has proper business operations, particularly if the business is seized, a cheque or bill protest is in effect or payments are delayed or even suspended or if it has applied for judicial or extrajudicial settlement proceedings or proceedings under the insolvency code, the Seller shall be entitled to demand immediate payment of all claims arising from the business relationship, even if bills of exchange or cheques have been accepted. The same shall apply if the Buyer is in default with its payments or other circumstances become known which make the buyer's creditworthiness appear doubtful. Furthermore, in such a case the Seller shall be entitled to demand advance payments or the provision of security or to rescind the contract.
- (7) If additional or increased charges – particularly customs duties, levies, currency adjustment – are incurred between the conclusion of the contract and delivery due to changed legal norms, the Seller shall be entitled to increase the agreed upon sales price accordingly.

§ 6 Delivery, transfer of risk

- (1) The delivery is made from the storage location of the goods, as specified in the tender. The Buyer collects the goods at its own expense and risk.
- (2) Disassembly and removal are at the expense and risk of the Buyer. Entering the premises on which the objects for sale are located for the purpose of examining or collecting them is at the Buyer's own risk.
- (3) Collection shall take place no later than the date specified in the invitation to tender. If the collection date is exceeded, the Buyer is automatically in default without notice. If the Buyer is in delay with the collection, it shall be obligated to pay the storage fees specified in the invitation to tender from the date specified therein. The assertion of further damages as a result of the delay on the part of the Buyer remains reserved. Any further statutory rights, particularly the right to terminate the contract in accordance with the statutory provisions and to claim damages, shall remain unaffected.
- (4) The risk is transferred to the Buyer when the goods are handed over to the Buyer or to the transporting party named by the Buyer.

§ 7 Rescission, compensation

- (1) A right to rescind the contract in accordance with the statutory requirements shall exist only if the Seller is responsible for the breach of duty.
- (2) The liability of the Seller and the liability of Battermann & Tillery shall be limited in accordance with the following provisions:

- (a) Liability exists only in the event of intent or gross negligence and for damage to life, limb or health, insofar as the other prerequisites for a claim exist. In the case of simple negligence, liability exists only in the event of a breach of an obligation, the fulfilment of which is essential for the proper execution of the contract and on the observance of which the contractual partner may regularly rely (material contractual obligations). In all other respects, any liability for damage of any kind, no matter the basis of the claim, including liability for *culpa in contrahendo*, is excluded.
- (b) In the case of liability for simple negligence, liability is limited to the foreseeable, typically-occurring damage.
- (c) The above exclusions and limitations of liability shall also apply to employees, vicarious agents and other third parties involved in the performance of the contract.
- (d) These limitations of liability do not apply to claims under the Product Liability Act, fraudulent concealment of a defect or assumption of a warranty for the quality of the item.

§ 8 Limitation

- (1) The limitation period for all claims against the Seller arising from the sales contract shall be shortened to one year. This shall not apply to claims for damages arising from injury to life, limb or health due to gross negligence or intent on the part of the Seller or its vicarious agents.
- (2) The limitation period begins with the transfer of the goods.

§ 9 Liability of the Buyer

- (1) The Buyer undertakes to the Seller and Battermann & Tillery, individually in each case, to strictly adhere to all requirements in the terms and conditions of the tender, for example a restriction on the use of the goods. The Buyer is obligated not to sell defective products, pursuant to § 3 of the Product Liability Act.
- (2) In the event that the products are placed on the market, even after any processing, the Buyer shall indemnify the Seller against all claims, including product liability claims, for which the Seller is liable to third parties in accordance with the statutory provisions, but which are based on breaches of duty by the Buyer or its legal successors. This includes, but is not limited to, the sale of defective products pursuant to § 3 of the Product Liability Act, although its defect was known upon purchase from the Seller.
- (3) The Buyer is also liable for compliance with sanitary and phytosanitary standards, food regulations, and other laws, regulations, conditions, etc. from the time of the Acceptance.
- (4) The Buyer shall compensate the Seller as well as Battermann & Tillery for all damages which arise in the case of violation of the aforementioned regulations by the Buyer and also to indemnify them from all claims raised against them due to such violations.

§ 10 Securities

- (1) The Seller shall be granted the following securities until all claims (including all outstanding claims from the current account) to which the Seller is entitled against the Buyer now or in the future, for any legal reason, have been satisfied:

- (a) The Seller retains title to all delivered goods until payment of all existing and future claims arising from the business relationship (Reserved Goods) has been made. In the event of breach of contract by the Buyer, particularly default of payment, the Seller shall be entitled to take back the object of purchase after rescission; the Buyer shall be obligated to surrender it. After taking back the goods, the Seller shall be entitled to market them, the proceeds from the sale shall be set off against the liability of the Buyer – less reasonable costs of the sale.

- (b) The Buyer shall be obligated to store the goods and products belonging to the Seller and to which the Seller is entitled to co-ownership with due care at the Buyer's own expense and to insure them against the risk of fire and theft and to provide proof of the conclusion of the insurance policy upon request.

- (c) The Buyer shall be entitled to sell the Reserved Goods in the ordinary course of business and is authorised to collect the assigned claim. The authorisation shall end if the Buyer is no longer willing or able to fulfil its obligations towards the Seller properly, particularly if the Buyer ceases payments or applies for the opening of insolvency proceedings over its assets. If the Buyer sells the Reserved Goods, it hereby assigns the Seller its claim from the resale with all ancillary rights to secure the claims of the Seller. In the event that the Reserved Goods are sold by the Buyer together with other goods not belonging to the Seller, the assignment of the sales price claim of the resale shall only apply to the amount of the proportionate invoice value accruing for the Reserved Goods in each case. The Buyer is authorised until revocation to collect the claim from the resale. The Seller may, however, demand that the Buyer informs the seller of the debtors of the assigned claim and informs the debtors of the assignment.

(d) Reconditioning and processing of the Reserved Goods shall be carried out for the Seller as manufacturer pursuant to § 950 of the German Civil Code without obligating the Seller. The reconditioned and processed goods shall be regarded as Reserved Goods. If the Buyer processes, combines or mixes the Reserved Goods with other goods, the Seller shall be entitled to co-ownership of the new item in the ratio of the invoice value of the Reserved Goods to the invoice value of the other goods used. If its ownership expires as a result of combining, mixing or processing, the Buyer hereby assigns to the Seller the ownership or expectant rights to which it is entitled to the new stock or item to the extent of the invoice value of the Reserved Goods, in the case of processing to the ratio of the invoice value of the Reserved Goods to the invoice value of the goods processed and shall keep them in safe custody for the Seller free of charge. The regulations concerning Reserved Goods shall also apply to the items generated by processing, combining or mixing, insofar as they are co-owned by the seller. If the Buyer sells the new item, the Buyer shall hereby assign to the Seller, as security for the purchase price claim, the claim to which the Buyer is entitled to against the purchaser of the new item in the amount of the share corresponding to the Seller's share of ownership, but not exceeding the invoice value of the claims to which the Seller is entitled against the Buyer

(2) Any impairment of the Seller's rights by third parties shall be notified to the Seller without delay. The Buyer shall immediately provide the Seller with all information and documents necessary for an intervention so that legal action may be filed pursuant to § 771 of the German Code of Civil Procedure. Insofar as the third party is not in a position to reimburse the Seller for the judicial and extrajudicial costs of an action pursuant to § 771 of the German Code for Civil Procedure, the Buyer shall be liable for the expenses incurred by the Seller.

§ 11 Data protection

(1) The processing of personal data is carried out pursuant to the legal provisions, particularly the EU General Data Protection Regulation and the German Federal Data Protection Act.

- (2) We process personal data in connection with salvage sales to initiate and process the contracts concluded with the customer. After the bid has been accepted, Battermann & Tillery will transmit personal data of the Buyer to the Seller such as name, address and email address.
- (3) Further details can be found in the data privacy statement available at <http://www.baty-tenders.com>.

§ 12 Closing provisions

- (1) Should any provision of these GTS be invalid, this shall not affect the validity of any of the other provisions or agreements.
- (2) Battermann & Tillery reserves the right to change these GTS at any time. The version of the GTS valid at the time of the conclusion of the contract shall apply. The current version of these GTS can be downloaded from <https://www.ba-ty.com/terms-and-conditions>.
- (3) The Buyer may assign claims arising from legal transactions concluded with the Seller only with the express written consent of the Seller.
- (4) Unless otherwise agreed upon, the place for performance or any obligation arising from these GTS shall be Bremen, Germany.
- (5) The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, including actions on bills of exchange and cheques, shall be Bremen.
- (6) The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).