

# General Terms and Conditions

## BMI Flachdachsysteme GmbH

This English version of the General Terms and Conditions is a translation of the German version. In the event of any conflict between the German and the English version the German version will prevail.

These General Terms and Conditions (hereinafter referred to as GTC) apply to all deliveries, services, offers and contracts of BMI Flachdachsysteme GmbH (hereinafter referred to as Seller). Unless expressly agreed otherwise, the general terms and conditions of the customer or third parties do not apply to the contractual relationship and are deemed rejected, even if Seller has not explicitly rejected their applicability. These GTC do not apply to consumers.

### 1. OFFER AND CONCLUSION OF CONTRACT

- 1.1 Offers made by Seller are subject to change and non-binding, unless they are expressly marked as binding or contain a specific validity period.
- 1.2 Orders or assignments placed by the customer, as well as all unilateral contractual notifications and declarations, must be in writing. Seller is entitled to accept orders or commissions by acceptance order or delivery.
- 1.3 Information provided by Seller on the delivery or performance of goods supplied (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data, product descriptions, brochures and technical data sheets including assembly instructions and samples of the products) as well as brochures and documentation thereof (e.g. drawings and illustrations) are only indicative, unless otherwise explicitly stipulated or agreed. They are not guaranteed quality specifications, but descriptions or identifications of the delivery or performance.
- 1.4 Unless explicitly stipulated or agreed otherwise any verbal and/or written advice provided by Seller is non-binding and does not release the customer from the obligation to check the products for suitability or any discrepancies. This also applies if a product type is generally recommended for a specific application.
- 1.5 If the customer has any questions or any doubt as to the accuracy of the documents or information provided to him by Seller, he must notify Seller without undue delay to clarify these questions or doubts.

### 2. DELIVERY AND DELIVERY PERIODS, TRANSFER OF RISK

- 2.1 Unless explicitly in the standard price list or otherwise agreed the delivery terms for the product shall be Ex-Works (per Incoterms 2020) at the location to be determined (plant or distribution warehouse). If deviated agreements have been made, the General German Forwarding Conditions (ADSp) apply in addition to these GTC.
- 2.2 Manufacturing plannings and/ or delivery dates provided by Seller are always only approximate and subject to timely delivery by our suppliers or our affiliated companies, unless a fixed period or deadline has been expressly assured or agreed. If fixed periods or deadlines have been agreed, they begin with the date of the final and complete order confirmation. Fixed periods and deadlines are met if the goods are timely made available by Seller at the plant or distribution warehouse.
- 2.3 If the provision of containers by the customer has been agreed, the customer's containers must be delivered to the delivery point of Seller in good time and free of charge. Seller is not obliged to inspect, clean or repair the containers, but is entitled to do so at the customer's expense.
- 2.4 Seller is entitled to make partial deliveries if (i) the partial delivery is usable for the customer within the scope of the contractual purpose, (ii) the delivery of the remaining ordered goods is ensured and (iii) the customer does not incur any significant additional work or additional costs as a result.
- 2.5 The delivered goods may only be resold by the customer unaltered in their original packaging.

### 3. PRICES AND PAYMENT TERMS

- 3.1 Unless otherwise agreed prices in writing between the Seller and the customer, the Seller's current list prices apply. Prices confirmed by Seller for one order are binding only for this single order.
- 3.2 The Seller is entitled to increase his prices partially or fully at any time with immediate effect.
- 3.3 If price increases are a result of the evolution of their fixed and/or variable costs (e.g.: wages and other social security contributions, costs of material, processing costs, energy costs, foreign exchange rate fluctuations, etc.), Seller has the right to issue these price increases upon notification also in case the aforementioned fixed and/or variable price impact occurs between the time of conclusion of the contract and the time of delivery – in part or in full – of the products. In this case Seller's prices valid at the time of delivery apply.
- 3.4 If the price increase in Section 3.3 is based on other reasons than those mentioned in Section 3.3, Section 3.3 applies accordingly. In that case customer is entitled to annul the contract within 14 days of notification, if the average price increases is more than 5%.
- 3.5 For contracts with various delivery dates, the aforementioned Sections apply accordingly to deliveries after the increase in prices.
- 3.6 The prices are stated in Euro and exclusive of the value-added tax and any other taxes, duties or charges of any kind imposed by any governmental authority on any amounts payable by the customer. Prices are based on delivery ex works / ex distribution centre (Incoterms 2020). Any transport costs and handling charges including any high crane delivery, packaging and costs for any necessary load securing as well as transport insurance which may be requested separately by the customer are not included in the list prices and will be charged and added to the invoice.
- 3.7 Invoices are due for payment within fourteen days of receipt without deduction.

- 3.8 Offsetting against counterclaims of the customer or the withholding of payments in relation to customer claims is only permissible if and to the extent the counterclaims are undisputed, have been legally established.

### 4. RESERVATION OF TITLE

- 4.1 Until full payment of all existing current and future claims of Seller against the customer arising from the business relationship existing between the contracting parties, the product delivered by Seller to the customer remains the property of Seller (extended reservation of title). The product as well as the goods which take its place in accordance with the following provisions and which are subject to reservation of title are hereinafter referred to as "Reserved Goods".
- 4.2 The customer stores the Reserved Goods free of charge for Seller. He is obliged to treat the Reserved Goods with care and to insure them adequately at his own expense against fire, water and theft at replacement value according to the price list. If maintenance and inspection work is required, the customer must carry this out in good time at his own expense.
- 4.3 If Seller annuls the contract (enforcement), he is entitled to demand the return of the Reserved Goods. In this case, the customer will either return the Reserved Goods to the Seller's location at his own expense, make the Reserved Goods available for collection by the Seller or allow the Seller access to his premises so that the Seller can mark and separate the Reserved Goods until Seller can collect the Reserved Goods and take repossession.
- 4.4 The customer is entitled to process and sell the Reserved Goods in the ordinary course of business until enforcement occurs. Pledging and transfer by way of security are not permitted.
- 4.5 If the Reserved Goods are processed by the customer, it is agreed that the processing is carried out in the name and for the account of Seller as manufacturer and that Seller acquires direct

ownership or, if the processing is carried out using materials from several owners or the value of the processed item is higher than the value of the reserved goods, co-ownership (fractional ownership) of the newly created item in the ratio of the value of the Reserved Goods to the value of the newly created item. In the event that no such acquisition of ownership should occur at Seller, the customer hereby transfers his future ownership or, in the aforementioned ratio, co-ownership of the newly created object to Seller as security. If the Reserved Goods are combined or inseparably mixed with other items to form a uniform item, and if one of the other items is to be regarded as the main item, the customer transfers, insofar as the main item belongs to him, the co-ownership of the uniform item to Seller on a pro rata basis in the ratio specified in this paragraph.

- 4.6** In the event of resale of the Reserved Goods, the customer hereby assigns by way of security to Seller the resulting claim against the purchaser, in the case of co-ownership by Seller of the Reserved Goods in the ratio to the co-ownership share (extended reservation of title). The same applies to other claims that take the place of the Reserved Goods or otherwise arise with regard to the Reserved Goods, e.g. insurance claims or claims in tort in the event of loss or destruction. Seller revocably authorises the customer to collect the claims assigned to Seller in his own name. Seller may only revoke this collection authorisation in the event of enforcement.
- 4.7** If third parties seize the Reserved Goods, in particular by attachment, the customer must inform them of Seller's ownership and must notify Seller immediately of the individual circumstances of such seizure. Any intervention costs incurred are borne by the customer.
- 4.8** Seller will release the Reserved Goods as well as the items or claims taking their place if their value exceeds the amount of the secured claims by more than 10%. Seller is responsible for selecting the items to be released accordingly.

## **5. WARRANTY**

- 5.1** Seller warrants that the products have the quality which is especially described in the Seller's product descriptions, provided to the customer prior to his order or which were included in the contract in the same way as these GTC. Customary deviations and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts and, provided these can be deemed to be reasonably acceptable to an average customer, changes in shape, colour and/or weight are permitted as long as they do not impair the usability for the contractually intended purpose.
- 5.2** The warranty in accordance with section 5.1 does not cover a comprehensive resistance of the products to sudden, external causes of any kind, in particular a resistance to hailstones of any intensity class. Only hailstones of smaller intensity classes are covered.
- 5.3** Additional guarantees only exist in case of a separate agreement which regulates the content and scope of the guarantee independently of these GTC and the statutory rights of the customer.
- 5.4** Seller assumes no liability for public statements made by third parties (e.g. advertising statements) unless it has been expressly agreed between the Seller and the customer.
- 5.5** A product which is the subject of a complaint must be returned to Seller, carriage paid, upon Seller's request. If and to the extent the complaint is justified, Seller will reimburse these costs on the basis of the cheapest means of shipment except in case the product is located at a place other than the place of the contractually intended use.
- 5.6** Furthermore samples of the objected product (original remnants from processing or the delivery of Seller on which the onward shipment is based) must be sent in at customer's costs.

- 5.7** In the event of defects, Seller's obligation is at Seller's option to repair or to replace the product within a reasonable period of time. If this fails, the customer has the right to annul the contract or to reduce the purchase price appropriately. If the defect of the product is due to the fault of the Seller, the customer can claim compensation of its direct and substantiated damages.
- 5.8** In the case of defects in components of other manufacturers which Seller is unable to remedy for reasons of licensing law or for factual reasons, Seller will at Seller's option either assert its warranty claims against the manufacturers for the customer's account or assign them to the customer. Warranty claims against Seller for such defects only exist if the legal enforcement of the aforementioned claims against the manufacturer has been unsuccessful or is futile, for example due to insolvency.
- 5.9** The warranty does not apply if, without Seller's consent, the customer modifies the product or has it modified by third parties and the repair of the defect is thereby rendered impossible or unreasonably difficult. If the repair of the defect is possible or not unreasonably difficult the customer has to bear the additional costs for the removal of defects, which result from the modification of the product
- 5.10** Liability for defects is not applicable for damage caused by unsuitable or improper use, incorrect assembly or commissioning by the customer or third parties, normal wear and tear, incorrect or negligent handling, consequences of improper modifications or repair work carried out by the customer or third parties without the consent of Seller.
- 5.11** The customer may only annul or terminate on account of a breach of duty that does not consist of a defect if Seller is responsible for the breach of duty. Withdrawal or termination must be declared in written form. In all other respects the statutory provisions and legal consequences apply.

## **6. SUPPLIER REGRESS**

- 6.1** If the delivered items are resold by the customer to a third party the customer's rights of subsequent performance apply with the proviso that the customer can demand from Seller the type of subsequent performance that he owes to his buyer in the individual case. If the customer has not exercised a contractual or statutory right to refuse subsequent performance to his buyer on the grounds of disproportionate costs, the obligation of Seller to reimburse the customer's expenses is limited to the costs that are not disproportionate within the meaning of § 439 (4) BGB. The customer is entitled to assign this claim for subsequent performance to his buyer, but only on account of performance and/or by way of security, i.e. without prejudice to his own continued liability towards his buyer. An assignment in lieu of performance is invalid. The right of Seller to refuse this supplementary performance under the statutory conditions remains unaffected.
- 6.2** If Seller has agreed an equivalent compensation with the customer within the meaning of § 478 (2) BGB, e.g. through a material guarantee to the members of the Central Association of the German Roofing Trade (Zentralverband des Deutschen Dachdeckerhandwerks e.V.) and/or through a material guarantee issued by Seller directly in favour of the end buyer of the supply chain, any claims for defects on the part of the customer that deviate from this and go beyond it in terms of content are excluded, in particular the customer's claim to reimbursement of the expenses that he has to bear towards his buyer (§ 445 a BGB).

## **7. PROPERTY RIGHTS**

- 7.1** Seller warrants in accordance with this clause that the delivery item is free from industrial property rights or copyrights of third parties. Each contracting party undertakes to notify the other contracting party in writing without delay if claims are asserted against it for the infringement of such rights.

- 7.2** In the event that the delivery item infringes an industrial property right or copyright of a third party, Seller will, at its discretion and at its expense, either modify or replace the delivery item in such a way that no more third-party rights are infringed, whilst the delivery item continues to perform the contractually agreed functions, or procure the right of use for the customer by concluding a licence agreement. If the Seller does not succeed in doing so within a reasonable period of time, the customer is entitled to annul the contract or to reduce the purchase price proportionately.
- 7.3** In the event of infringements of rights by items delivered by Seller from other manufacturers, Seller will, at its discretion, either assert its claims against the manufacturers and sub-suppliers for the account of the customer or assign them to the customer. In these cases, claims against Seller exist in accordance with the provisions of this clause only if the legal enforcement of the aforementioned claims against the manufacturers and sub-suppliers has been unsuccessful or is futile, for example due to insolvency.
- 7.4** Seller reserves the ownership or copyright of all offers and cost estimates submitted by it as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the customer. The customer may not, without the express consent of Seller, publish, reproduce or make these objects available to third parties or use them for any purpose other than the agreed one. At the request of Seller, he must return these items in full to Seller and destroy any copies made if they are no longer needed by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

## **8. LIABILITY**

- 8.1** Seller is liable for the breach of any contractual or statutory obligations without limitation (I) in the event of intent or gross negligence, (II) in the event of injury to life, limb or health, (III) in accordance with the

provisions of the German Product Liability Act and (IV) in the event of any guarantees assumed by Seller.

- 8.2** In all other cases of simple or slight negligence, Seller is liable only for the breach of material contractual obligations and only for those damages that are typical for the type of transaction in question and were foreseeable for Seller at the time the contract was concluded. Material contractual obligations are those obligations that protect legal positions of the customer that are material to the contract and which the contract must grant him according to its content and purpose; also material are those contractual obligations the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the customer has regularly relied and may rely.
- 8.3** In the event of liability for simple or slight negligence, the liability of Seller to provide compensation for property damage and resulting financial losses is limited to an amount of 1,000,000 Euro per claim.
- 8.4** In case Seller advises Customer and the advice is not part of the contractually agreed scope of services provided by Seller, such advice is provided on a nonbinding and free of charge basis only. Any reliance on it by the buyer is not protected.
- 8.5** There is no further liability under contract, tort or otherwise of Seller.

## **9. FORCE MAJEURE**

- 9.1** If any party is as a result of an event beyond its reasonable control unable to perform all or any part of its obligations under the Contract (and such an event shall include being unable to, in relation to the Seller, supply the products or to supply the products in time) ("Force Majeure Event"), then the party suffering such Force Majeure Event shall be excused from such performance for as long as, and to the extent that, such inability continues provided it complies with this clause. The party affected by a Force Majeure Event shall declare as soon as reasonably possible force majeure by written notice to the other party. The party disabled by a Force

Majeure Event shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event. Failure of mechanical equipment, computer hardware and/or telecommunications equipment, failure of software, power outages, changes in applicable laws, changes in economic conditions, costs and/or delivery of raw materials, and strike and other labour dispute of any Seller's Personnel or representatives (or Seller's affiliates or their representatives) or pandemics does qualify as a Force Majeure Event of Seller.

**9.2** In the event of temporary inability the delivery or service deadlines are extended or postponed by the period of the inability plus a reasonable start-up period.

## **10. FINAL PROVISIONS**

**10.1** If Seller is provided with information by the customer in the course of business relations, this information is not considered confidential, unless expressly agreed otherwise in writing.

**10.2** Seller undertakes to comply with the relevant data protection regulations. Seller will collect, process and use the personal data provided by the customer only in accordance with the contract and within the scope of its tasks. Furthermore, when collecting, processing and using personal data, Seller will only employ personnel or third parties who are bound to maintain data secrecy.

**10.3** Seller has subcontracted its obligation for return of packaging to Interseroh Dienstleistungs GmbH.

**10.4** Should individual provisions be invalid or unenforceable, the validity of the remaining provisions shall not be affected.

**10.5** This contract and all legal relations between the parties are subject to the law of the Federal Republic of Germany, excluding private international law and the United Nations Convention on Contracts for the International Sale of Goods.

**10.6** The exclusive place of jurisdiction over all disputes arising out of or relating to the Contract is the registered office of Seller.

**10.7** Additions and amendments to the contractual agreements made, including these General Terms and Conditions, must be made in writing to be effective, unless a more extensive form is required by law. The transmission of the original by fax or digital copy (e-mail) as well as by post preserves the form, § 127 (2) BGB.

As of January 2022