

General Terms and Conditions of Sale and Delivery of Burghart Messtechnik GmbH (GENERAL TERMS AND CONDITIONS)

Status: January 2021

1. Scope of Application

- 1.1 These General Terms and Conditions of Sale ("GTC") shall apply to all business relationships of Burghart Messtechnik GmbH in Wedel (hereinafter referred to as "Seller") with entrepreneurs within the meaning of § 14 BGB (German Civil Code) (hereinafter referred to as "Customer"), the subject matter of which is the sale and delivery of goods, service and repair activities and the provision of services. These GTC shall not apply to consumers within the meaning of § 13 BGB.
- 1.2 All services of the Seller - including the provision of the associated software - shall be performed exclusively in accordance with these following GTC. Any deviating terms and conditions of purchase of the Customer shall not apply unless the Seller has expressly agreed to them in writing. These GTC shall also apply if the Seller carries out the delivery to the Customer without reservation in the knowledge that the Customer's terms and conditions conflict with or deviate from these GTC.
- 1.3 Individual agreements made with the Customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or our electronic order confirmation shall be authoritative for the content of such agreements.
- 1.4 These GTC shall also apply to all future transactions with the customer, insofar as they are legal transactions of a related nature.
- 1.5 The Seller shall be entitled to amend these GTC for the future. Amendments shall also become part of the current business relationship as of their validity if the customer does not object within a period of 1 month after notification of the amendment. The Seller shall expressly draw the Customer's attention to this consequence when notifying the Customer.

2. Offer and Acceptance

- 2.1 The offers of the seller, including those on the website <https://www.burghart-mt.de/en/>, are subject to change. This shall also apply to individual orders placed by the customer. Orders are only binding for the seller if he confirms them in writing or electronically or fulfills them - especially in the case of catalog components - by delivery.
- 2.2 Ancillary agreements and amendments must be confirmed by the Seller in writing.
- 2.3 The Seller reserves the right to make changes in design and weight, insofar as they serve technical progress.
- 2.4 Drawings and documents enclosed with the offer are for the personal use of the recipient only and may not be reproduced or made available to third parties without our express permission, nor made available to third parties without our express permission.
- 2.5 Obvious errors, printing, calculation, typing and calculation errors are not binding on the seller and do not give rise to any claim for performance or damages.

3. Prices and Payment

- 3.1 The prices do not include the statutory value added tax at the applicable rate and the packaging costs. Unless expressly stated otherwise, all prices shall be ex works (EXW) Wedel (Incoterms 2020).
- 3.2 In the case of sale by delivery to a place other than the place of performance, the customer shall bear the transport costs ex works as well as the costs of any insurance requested by the customer against theft, breakage, transport, fire and water damage as well as against other insurable risks.
- 3.3 Unless otherwise agreed, the purchase price, assembly costs, repair costs, costs for product information, training fees and other costs shall be payable net cash when due. Unless otherwise agreed, Seller's

- invoices shall be due for payment within 14 days after receipt and delivery or acceptance of the Products. The deduction of any discount must be specifically agreed in writing.
- 3.4 When ordering via the web shop <https://www.burghart-mt.de/en/>, the customer can pay by credit card (Visa and Master Card), purchase on account, prepayment and PayPal. For orders outside our web shop, payment can be made by bank transfer, advance payment, invoice or PayPal. If foreign bank charges are incurred, these are to be borne by the buyer.
- 3.5 The payments owed shall only be deemed to have been effected when the amount is finally available in one of the Seller's business accounts. Upon expiry of the payment period specified in clause 3.3, the Customer shall be in default. The purchase price shall be subject to interest at the statutory default interest rate applicable at the time. The Seller reserves the right to assert further damage caused by default.
- 3.6 The Seller reserves the right to increase or reduce its prices accordingly if the delivery period is more than 30 days and there are cost reductions or cost increases of more than 5% in total between the order confirmation and the delivery date, in particular due to a change in the prices of raw materials or the prices for transport. The Seller shall provide evidence of a change in costs to the Customer upon request. The Seller shall pass on to the Customer any unforeseen change in costs due to mandatory statutory provisions, irrespective of the delivery period.
- 3.7 The Customer may only offset counterclaims that have been legally established, are undisputed or have been recognized by the Seller. The customer shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship. In case of justified doubts about the customer's solvency, in particular in case of payment arrears, the seller is entitled to revoke granted payment terms and to demand advance payment or securities for further deliveries.

4. Deliveries and Delivery Periods

- 4.1 The Seller's delivery obligation shall be subject to correct and timely delivery to the Seller.
- 4.2 Unless otherwise agreed in writing, the Seller shall deliver ex works (EXW) Wedel (Incoterms 2020).
- 4.3 The Seller shall be entitled to make partial deliveries insofar as this is reasonable for the Customer.
- 4.4 The delivery period shall commence upon dispatch of the order confirmation, provided that the purchase price has been paid in advance (except in the case of purchase on account). However, this shall only apply if all technical and commercial details have been clarified at this point in time and the Seller has received any necessary approvals and releases.
- 4.5 Compliance with the delivery period shall be subject to the fulfillment of the Customer's contractual obligations.
- 4.6 Delivery periods do not constitute fixed dates unless otherwise agreed in writing. The delivery period shall be deemed to have been complied with if, by the time of its expiry, the delivery item has left the factory or the customer has been notified that it is ready for dispatch.
- 4.7 The delivery period shall be extended appropriately in the event of unforeseen events outside the Seller's sphere of influence, e.g., operational disruptions, delays in the delivery of essential raw materials and components, insofar as the obstacles demonstrably have a significant influence on the completion or delivery. This also includes strikes and lockouts. The Seller shall not be responsible for the aforementioned hindrances even if they occur during an already existing delay.
- 4.8 If the Seller is unable to meet the delivery deadlines for reasons for which it is not responsible, it shall inform the Customer of this without delay and at the same time notify it of the expected new delivery deadline. If the service is also not available within the new delivery period, the Seller shall be entitled to withdraw from the contract in whole or in part; the Seller shall immediately refund any consideration already paid by the Customer.
- 4.9 In the event of a delay in delivery, the Customer shall grant the Seller a reasonable grace period of at least two weeks.
- 4.10 If the shipment is delayed at the request of the Customer, the Seller shall be entitled, after a reasonable period of time, to otherwise dispose of the delivery item and to supply the Customer with a correspondingly extended period of time.

5. Passing of Risk and Acceptance

- 5.1 The risk of accidental loss or accidental deterioration of the goods shall pass to the customer upon

dispatch of the products, even in the case of partial deliveries. This shall also apply if the Seller has assumed the delivery and installation.

- 5.2 If the shipment is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer from the date of readiness for shipment.

6. Retention of Title

- 6.1 The delivered goods shall remain the property of the Seller until full payment of all currently existing and future claims arising from the business relationship with the Customer, irrespective of the legal grounds. In the case of a current account, the retention of title shall be deemed security for the Seller's balance claim.
- 6.2 If the retention of title is not effective under the law of the country in whose territory the Seller's products are located, the next effective legal security corresponding to the retention of title in that country shall be deemed agreed. The Customer shall, if necessary, take all measures required for the approval and maintenance of such a right.
- 6.3 The customer is obliged to handle the reserved goods with the care of a prudent businessman and to insure them against the usual storage risks at its own expense. The customer hereby assigns its claims under the insurance contracts to the seller.
- 6.4 Should the customer act in breach of contract, in particular be in default of payment, the seller shall be entitled to take back the products and the customer shall be obliged to surrender them. The assertion of these rights of retention of title or the seizure of the Seller's products shall not be deemed a withdrawal from the contract.
- 6.5 The customer is revocably entitled to resell the delivered goods in the ordinary course of business. However, the Customer hereby assigns to the Seller by way of security all claims against third parties arising from the resale of the delivered goods in the amount of the final invoice amount agreed with the Seller (including any value added tax). At the Seller's request, the Customer shall be obliged to disclose the assignment to third parties for the purpose of payment to the Seller and to provide the Seller with the information and documents necessary to assert its rights.
- 6.6 The customer is not entitled to pledge the reserved goods or the assigned claims to third parties or to transfer them as security. In the event of seizure or other access by third parties to the reserved goods or the assigned claims, the customer shall notify the seller immediately in writing. Insofar as the Seller successfully brings an action pursuant to § 771 of the German Code of Civil Procedure (ZPO) and the third party is not in a position to reimburse the Seller for the judicial and extrajudicial costs, the Customer shall be liable for the loss incurred by the Seller.
- 6.7 The customer shall be permitted to process, transform and combine the reserved goods with other items. The processing or transformation shall be carried out for the seller. The Seller shall become the direct owner of the item produced by processing or transformation. The processed or transformed item shall be deemed to be reserved goods. In the event of processing, transformation or combination with other items not belonging to the Seller, the Seller shall be entitled to a co-ownership right in the new item in the amount of the share resulting from the ratio of the value of the processed, transformed or combined reserved goods to the value of the new item. If the goods subject to retention of title are combined by the customer with real property or movable property, the customer shall also assign its claim to which it is entitled as remuneration for the combination, together with all ancillary rights, to the seller by way of security without any further declarations being required.
- 6.8 The Seller shall release the securities to which it is entitled at the Customer's request to the extent that the realizable value of the securities to which it is entitled exceeds the claims to be secured by more than 20%; the Seller shall be responsible for selecting the securities to be released.

7. Burghart Software

- 7.1 The Burghart Software is executable on the hardware products specified by the Seller.
- 7.2 In return for payment, the customer shall receive a non-exclusive, non-transferable right to use Burghart software of any kind and the associated documentation for a specific hardware product or a hardware product to be specified in the individual case. Modifications to the software are not permitted.
- 7.3 The Seller shall remain the owner of the copyright and all other industrial property rights. The right to make copies is given only for the purpose of data backup. Copyright notices may not be removed.

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- 7.4 The transfer to third parties requires the prior consent of the Seller. In case of transfer of software for the purpose of resale, the customer shall ensure that the third party accepts these terms and conditions.
- 7.5 In the event of a culpable violation of the above provisions, the Seller shall be entitled to claim a contractual penalty in the amount of 10% of the order value. The right to claim damages in excess thereof is expressly reserved.

8. Warranty, Notice of Defects, Guarantee

- 8.1 The customer shall inspect the goods immediately after delivery and notify us in writing of any material defects, incorrect deliveries or deviations in quantity without delay, but no later than one week after delivery. In the case of partial deliveries, this obligation of the customer shall apply to each individual partial quantity.
- 8.2 The customer shall give notice of hidden defects without undue delay after discovery of the defect, but at the latest within six months after delivery.
- 8.3 The warranty period shall be 12 months after delivery of the item, unless mandatory statutory provisions provide for a longer limitation period.
- 8.4 In the event of timely and justified complaints, the customer's claims for defects shall initially be limited, at the seller's discretion, to removal of the defect or delivery of a defect-free item. In the event of defects in the Burghart software, the software shall always be replaced.
- 8.5 After notification of the defect, the customer must give the seller the time and opportunity required for the rectification or replacement delivery. Only in urgent cases of danger to operational safety and the prevention of major damage shall the Customer, with the prior consent of the Seller, have the right to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary costs from the Seller.
- 8.6 If the subsequent performance by the Seller fails, the Customer may reduce the purchase price or, at its option, withdraw from the purchase contract. Claims for damages under consideration of clause 9 shall remain unaffected.
- 8.7 Furthermore, the Seller shall not assume any warranty for damage caused by the following reasons: unsuitable or improper use or storage, faulty assembly by the Customer or third parties, unauthorized repair attempts and modifications, natural wear and tear, faulty or negligent handling, chemical influences, electrical influences, etc., over which the Seller has no influence. The warranty shall not apply if and to the extent that the customer modifies the delivered goods or software without the written consent of the seller.
- 8.8 An additional guarantee shall only exist for the goods delivered by the Seller if this was expressly stated in the order confirmation for the respective service. The currently valid General Guarantee Conditions shall be attached to the order confirmation.

9. Liability

- 9.1 Unless otherwise provided in these GTC including the following provisions, the Seller shall be liable for a breach of contractual and non-contractual obligations within the scope of fault-based liability in case of intent and gross negligence in accordance with the statutory provisions.
- 9.2 In the event of gross negligence, the liability for damages shall be limited to the foreseeable damage typical for the contract.
- 9.3 In the event of simple negligence, the Seller shall only be liable for damages arising from injury to life, body or health and for damages arising from the breach of a material contractual obligation. A contractual obligation is essential if it is essential for achieving the purpose of the contract; in this case, however, the Seller's liability shall be limited to the foreseeable damage typical for the contract.
- 9.4 The limitations of liability resulting from clauses 9.2 and 9.3 shall not apply insofar as the Seller has fraudulently concealed the defect or has assumed a guarantee for the quality of the item. The same shall apply insofar as the Seller and the Customer have reached an agreement on the quality of the item. The provisions of the Product Liability Act remain unaffected.

10. Data Protection

Medical devices
Measuring devices
Special equipment

Customized development
Inhouse-prototyping
Assembly and Service



- 10.1 Any processing of personal data of the customer shall be carried out in accordance with the provisions of the EU Data Protection Regulation (DS-GVO) and the statutory data protection provisions of the Federal Data Protection Act (BDSG).
- 10.2 Further information and explanations on the handling of the customer's data as well as on the type, scope and purpose of the collection and use of personal data carried out are available on our website <https://www.burghart-mt.de/en//data-protection.html>.

11. Final Provisions

- 11.1 These GTC and the contractual relationship between the Seller and the Customer shall be governed by the laws of the Federal Republic of Germany, excluding the international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- 11.2 The place of performance as well as the exclusive place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship shall be Wedel, Germany. However, Seller shall also be entitled to bring an action at Customer's principal place of business. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.
- 11.3 Should any provisions of these GTC be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions. The same shall apply if it should turn out that these GTC contain a loophole. In place of the invalid or unenforceable provision or in order to fill the gap, such a provision shall be deemed to have been agreed which is suitable to realize the economic purpose of the omitted provision as far as possible.

