

# GENERAL TERMS OF DELIVERY

## Applicable as of 17 November 2010

### 1 SCOPE

- 1.1 All sales from the B&B TOOLS group's product companies shall take place in accordance with these General Terms of Delivery. "Product company" here means all companies included in any of the sub-groups Essve, Luna, Gigant, Grunda and Skydda.
- 1.2 In the event the parties have agreed in writing on terms which deviate from that which is prescribed in these terms, the parties' special agreement shall apply in those respects. Such an agreement regarding deviation must be made in writing and accepted by both parties in order to be enforceable. Any text on the Purchaser's orders or similar documents shall not change the terms unless the Supplier has expressly confirmed in writing that the terms shall be changed, and in which manner.
- 1.3 The company which constitutes the selling company is referred to in these General Terms of Delivery as the "Supplier" and the purchasing company as the "Purchaser".
- 1.4 "Products" means, in these General Terms of Delivery, all products which the Supplier sells to the Purchaser.
- 1.5 These General Terms of Delivery may, together with the Customer's order, constitute the parties' entire agreement. Alternatively, however, the parties may have a written agreement to which these General Terms of Delivery constitute an appendix. "[The] Agreement" in these General Terms of Delivery means, in addition to the terms *per se*, also where appropriate agreements executed by the parties as well as each individual order, as evident on each occasion when the term is used. These General Terms of Delivery constitute an integrated part of each such Agreement.
- 1.6 In addition to these General Terms of Delivery and the Agreement, the terms and conditions set forth in the General Terms and Conditions of Sale, [Appendix 1](#), shall apply.

### 2 INFORMATION

- 2.1 The information provided in catalogues, prospectuses, marketing information, etc. is provided solely as guidance. Technical data is also provided subject to reservations in respect of design changes and reservations in respect of various measurement method variations, etc. In the event any specific information is important for the Purchaser's design or use of the Product, the Purchaser is encouraged to request a specific written statement from the Supplier regarding the relevant information whereby the Supplier expressly assumes liability in respect of the information.
- 2.2 All instructions, advice, or other instructions which the Supplier gives to the Purchaser shall only constitute general advice and do not constitute any warranty or similar undertaking. The Purchaser shall at all times, at its own risk, select the Products which the Purchaser wishes to purchase and determine how the Products are to be used. Regarding the Supplier's special statements, see above.
- 2.3 Title to each and every intellectual property right related to the Products shall remain vested exclusively in the Supplier.

### 3 PRICE AND PAYMENT

- 3.1 Unless otherwise agreed, sales shall take place at the prices which the Supplier applies at the time of delivery. The Supplier shall at all times be entitled to adjust current prices in light of any exchange rate changes or commodity price changes. All prices are applicable exclusive of Value Added Tax and other public charges.
- 3.2 Payment shall take place within thirty days of the invoice date.
- 3.3 Where the Purchaser fails to make timely payment, the Supplier shall be entitled to penalty interest on arrears commencing the due date, at a rate applicable in accordance with the Interest Act in the country of the Supplier.
- 3.4 The Supplier shall be entitled to terminate the Agreement unless the purchase price is paid on time. In such case, the Supplier shall be entitled to compensation for the entire loss suffered by the Supplier.

### 4 DELIVERY AND DELIVERY PERIOD

- 4.1 Delivery clauses shall be interpreted in accordance with INCOTERMS as worded upon execution of the Agreement. Where no delivery clause has been agreed, Ex Works shall apply.
- 4.2 Where, according to a separate agreement, delivery is to take place within a certain period of time, such period shall be calculated commencing the date of the order confirmation, unless otherwise agreed. Where payment is to be made in advance, the period shall not, however, begin to run until the Supplier has received payment.
- 4.3 In the event of delayed delivery due to any circumstances constituting force majeure in accordance with 11.1, or due to any act or omission by the Purchaser, the delivery period shall be extended for such time as is reasonable in light of the circumstances. The delivery period shall be extended even if the reason for the delay occurs after the expiry of the originally agreed delivery period.
- 4.4 Where the Purchaser rescinds the Agreement as a consequence of the Supplier's delay, the Purchaser shall be entitled to compensation from the Supplier in respect of the delay in the amount of 2% per week of delay, however not exceeding 20% of the value of the delayed Products. Where the Purchaser does not rescind the Agreement, the Purchaser shall not be entitled to any compensation as a consequence of the Supplier's delay.
- 4.5 Where the Purchaser fails to accept the Products on a fixed day, payment shall nevertheless be made as if delivery had taken place according to the Agreement, and the Purchaser shall compensate the Supplier for the entire loss which the Supplier suffers as a consequence.
- 4.6 Where the Purchaser fails to give notice of complaint within seven (7) days from delivery with respect to any defective shipment or transport damage or other defects in the delivery, e.g. as regards the number of pallets or packages, the Purchaser shall not be entitled to assert such defects or damage.

### 5 TRADEMARKS

- 5.1 The Purchaser, as distributor of the Products, shall in conjunction with marketing of the Products use trademarks and product designations to the extent and in the manner stated by the Supplier from time to time. The obligation and right to use such trademarks is limited to the right to sell the Products which the Purchaser has received, and shall cease immediately upon termination of the sales right. Through this Agreement, the Purchaser acquires no independent right to the trademarks.

### 6 SOFTWARE LICENCES

- 6.1 The Supplier, together with other companies in the B&B TOOLS group, has developed the 'Toolstore' website and the digital price information 'Prisfilen [*Price File*]'. In connection with the execution of the Agreement, the Supplier may grant the Purchaser a right to use 'Toolstore' and/or the Price File within the scope of this co-operation and on the terms and conditions stated in [Appendix 2](#).
- 6.2 All information concerning Toolstore and the Price File shall be treated as confidential and may not be used for any purpose other than sales and, where appropriate, resales of the Supplier's Products, and may not be disclosed to third parties.
- 6.3 The Purchaser's right to the use Toolstore and the Price File shall cease immediately upon termination of the Agreement. The Supplier may also make other adjustments regarding the Purchaser's access to Toolstore at its free disposal.

### 7 LIABILITY FOR DEFECTS

- 7.1 The Supplier shall not be liable for defects due to circumstances which occur after delivery has taken place, where such defect is due to circumstances beyond the Supplier's control. The Supplier shall not be liable for defects due to material or designs provided by the Purchaser. Nor shall the Supplier be liable for defects which consist of the Product failing to correspond to such information regarding the Product's qualities or use as provided by a party other than the Supplier, for example by a manufacturer. Furthermore, the Supplier's liability extends only to such defects as arise in conjunction with normal use. Under no circumstances shall the Supplier be liable for defects resulting from defective maintenance, incorrect installation,

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- modifications or repairs carried out by a party other than the Supplier, normal wear and tear, and accidents.
- 7.2 The Supplier's liability extends solely to defects which manifest themselves during a period of one (1) year from the date of delivery. The liability shall not apply to wear parts with a normal shelf-life of less than one (1) year, and in those cases where date marking has taken place, the liability shall apply solely during the stated shelf-life period.
- 7.3 The Supplier undertakes, in its discretion, during the warranty period to deliver free of charge new Products as replacement for Products which are defective, or to rectify defects. Rectification may, in the Supplier's discretion, take place either at the Supplier's premises or at the Purchaser. For replacement products which the Supplier has delivered to the Purchaser, the warranty period set forth in 7.2 shall apply calculated from the date of delivery of the original Product. Any destruction costs and costs for access and restoration or suchlike shall be defrayed by the Purchaser.
- 7.4 The Purchaser may not invoke defects in the Products where the Purchaser has failed to give the Supplier written notice of the defect within ten (10) days calculated from the date on which the defect was, or should have been, discovered. Where the Purchaser gives notice of defect and it transpires that the Supplier is not liable for the defect, the Supplier shall be entitled to compensation for the costs incurred as a consequence of the notice of defect.
- 7.5 The Supplier may refund the purchase price, instead of rectification or redelivery. In such case, the Purchaser shall return the Products in essentially unchanged condition. Where this is not possible, when settling the purchase price the Supplier shall be credited with an amount corresponding to the value of that which is retained.
- 7.6 Through the Purchaser being provided with duly repaired or replaced parts or Products or refund of the purchase price, the Supplier shall be deemed to have performed its obligations in respect of the defect. The Purchaser shall thus not be entitled to claim any compensation from the Supplier in addition to the abovementioned measures. Where any disassembly and installation results in interference with parts other than the Products, the Purchaser shall be liable for the work and costs occasioned thereby.
- 8 LIABILITY FOR PERSONAL INJURY AND PROPERTY DAMAGE, ETC.**
- 8.1 The Purchaser shall hold the Supplier harmless to the extent the Supplier is held liable to a third party in respect of such damage or loss for which the Supplier is not liable to the Purchaser in accordance with 7.1, 7.2 and 10.2.
- 8.2 The Supplier shall not be liable for property damage which the Products cause to any real or personal property where the damage occurs when the Products are in the Purchaser's possession, or on goods produced by the Purchaser, or on goods in which the Purchaser's goods are incorporated, or in respect of damage to real or personal property caused by such goods due to the Products.
- 8.3 The Supplier's liability for personal injury or damage to real or personal property caused by the Products which belong to the Purchaser or a third party, or which otherwise arises in the parties' dealings, shall under no circumstances cover production shortfalls, loss of profit, or other indirect loss. With respect to limitation of liability as regards amounts, see 10.1.
- 8.4 Where any third party makes a claim against the Supplier or the Purchaser for compensation for damage or loss, the other party shall be notified thereof as soon as possible, and within ten (10) days at the latest. If this does not occur, the party shall not be entitled to turn to the other party and claim recourse liability from such party according to law or this Agreement, as a consequence of a third party claim. Nor shall the Purchaser be entitled to claim liability from the Supplier in respect of third party claims where the Purchaser has entered into a settlement or other agreement with a third party without first obtaining the Supplier's written consent.
- 8.5 The Supplier and Purchaser are obliged to allow themselves to be summoned to the court or arbitral tribunal which is entertaining any claim for compensation against either of them, where the claim is based on damage or loss allegedly caused by the delivered Products. The relationship *inter se* of the Purchaser and Supplier shall, however, at all times be determined in accordance with the provisions of this Agreement.
- 8.6 The provisions in this section above and other relevant parts of this Agreement shall apply also to product liability to the extent legally possible. In other respects, the provisions of the Product Liability Act (1992:18) shall apply.
- 9 MODIFICATIONS TO PRODUCTS**
- 9.1 The Purchaser may not interfere with the Products or remove or change any trademark, trade name, sign, or other marking, as regards the Products or the Products' packaging.
- 10 LIMITATION OF LIABILITY, ETC.**
- 10.1 The Supplier's liability for damage - irrespective of whether the damage arises as a result of delay, defect, damage caused by the Product, or in any manner whatsoever - shall be limited to SEK 500,000 per occasion of damage and year. Where any lower limitation of liability is stated in a specific section, such lower amount shall take precedence. The provisions of this section constitute a cap on compensation. Where, notwithstanding this provision, in any way associated with the co-operation the Supplier becomes liable to compensate an amount in excess of SEK 500,000, the Purchaser shall hold the Supplier harmless in respect of each and every such liability exceeding the aforementioned amount.
- 10.2 Other than the sanctions set forth in this Agreement, each and every claim by the Purchaser against the Supplier as a consequence of defects or delay shall be barred, except in cases of gross negligence.
- 10.3 Under no circumstances shall the Purchaser be entitled to make set-off of any amounts based on claims against the Supplier.
- 11 FORCE MAJEURE**
- 11.1 Circumstances which prevent or render materially more onerous performance of any of the parties' obligations under the Agreement and which are beyond the control of a party, such as but not limited to lightning, terrorism, fire, earthquakes, flooding, war, mobilisation or military conscription of any major extent, riot or revolt, requisition, seizure, currency restrictions, public authority provisions, limitations on fuel, general shortages of transportation, goods or energy, or strikes, blockades, lockouts, or other industrial conflicts, irrespective of whether or not the party to the agreement is a party to the conflict, as well as defects or delays in products from subcontractors due to the aforementioned circumstances, shall constitute force majeure events providing an entitlement to a necessary extension of time and release from sanctions. Such force majeure events shall be notified in writing to the other party without unreasonable delay after a party realised or should have realised that the force majeure event pertained.
- 11.2 Where performance of the Agreement is prevented for a period in excess of six (6) months due to such circumstances as stated in 11.1, each party shall be entitled to terminate this Agreement without being obliged to compensate for loss or otherwise.
- 12 APPLICABLE LAW AND DISPUTES**
- 12.1 Any and all disputes arising from this Agreement shall be governed by Swedish substantive law and conclusively determined by arbitration administered by the Arbitration Institute (the Institute) at the Stockholm Chamber of Commerce. Where the amount in dispute does not exceed SEK 500,000, the Institute's Rules for Expedited Arbitrations shall apply. Where the value of the subject matter of the dispute exceeds SEK 500,000, the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply. All information in such a dispute shall be kept confidential.
- 12.2 Notwithstanding the aforesaid, the Supplier shall be entitled to apply for expedited payment at the debt enforcement office or to commence judicial proceedings in the event of clear and due claims.
- 13 LIMITATIONS**
- 13.1 Claims may not be brought against the Supplier later than one (1) year from delivery of the Products.