

General Terms and Conditions 01/2017

A. Offer and conclusion of contract

1. Offers are, as a rule, made free of charge. Plans/layouts are made free of charge only when expressly agreed or the supply agreement becomes and remains legally binding. We retain the copyright for cost estimates, drawings and other documents; they may not be disclosed to third parties. We reserve the right to charge for any proposal/quotation that is explicitly requested by its recipient.
2. We are not bound by orders until they are confirmed by us in writing. Ancillary agreements and amendments must be confirmed by us in writing.

B. Prices and payment

1. Prices are stated ex works Reichshof-Wehnath, excluding VAT, packaging and transport insurance.
2. Additional work and installation work is charged by the hour at a rate of EUR 72.00/hour.
3. Payment shall be in cash without deductions ex paying agent. All payments shall be made in advance unless other terms of payment are offered by us and/or agreed with us in individual cases for whatever reason.
If delivery/installation is delayed for reasons for which the customer is directly or indirectly responsible, invoices will bear the date on which the goods were ready for loading/dispatch.
4. Unless explicitly agreed upon differently, our invoices are due for payment within 30 days as of the date of receipt. In case of failure to pay when due, we are entitled to charge interest of 5% in excess of the ECB's key lending rate. For merchants, we are entitled to charge 9% in excess of the ECB's key lending rate.
5. The customer may not withhold payment or invoke a right to offset against our receivable on account of any counter-claims, unless offsetting is based on undisputed and/or legally binding counterclaims.
6. If agreed, checks will only be accepted on account of performance. Any costs or expenses incurred by payment by check shall be borne by the customer.
7. If the customer does not fulfill payment obligations, ceases payment or does not honor a check or if we become aware of a material deterioration in the customer's circumstances that may jeopardize the purchase price claim, the remaining debt will be immediately payable. If the remaining debt is not settled immediately, the customer will lose the right to make use of the goods supplied. We will be entitled to reclaim the goods supplied without waiving our claims until they are settled or to withdraw from the contract. If the goods supplied are reclaimed, all costs shall be borne by the customer. In the event of withdrawal from the contract, the customer shall pay compensation for use of the goods delivered including any reduction in value, irrespective of fault, and loss of profit.

C. Time of delivery and delivery

1. The delivery period begins with the date on which the order is confirmed but not before the documents to be provided by the customer have been submitted such as the legally binding counter-signed order confirmation, print templates and not before receipt of the agreed payment. Any fixed deadlines confirmed by us in writing are only binding if prior deadlines and obligations on the part of the customer have been met.
2. The delivery deadline is deemed to have been met if the goods supplied have left the works or notice of readiness for dispatch has been given. We reserve the right to give separate notice of readiness for dispatch.
3. The delivery period is stayed as long as the effects of force majeure, government intervention, business interruptions and any other disruptions we were unable to foresee and/or for which we are not responsible, including but not limited to delays in the supply of raw and construction materials leading to standstills or delays in the planning, design or production of the goods. The delivery period is extended by the period in which the time of delivery is stayed.
4. There is only a right to withdraw from the contract if a grace period of no less than six weeks is exceeded.
5. If dispatch is delayed for reasons for which the customer is directly or indirectly responsible, any costs of storage will be borne by the customer.
6. Delivery is ex works.
7. All deliveries are transported at the cost and risk of the customer, even in the event of our means of transport being used.
8. Partial shipments are permitted.

D. Transfer of risk

1. Risk is transferred to the customer as soon as the shipment has been dispatched on our means of transport or has been transferred to a third party.
2. If dispatch is delayed for reasons for which the customer is directly or indirectly responsible, risk shall be transferred as of the day on which the goods are ready for dispatch.

E. Retention of title

1. The goods remain our property until the purchase price is paid in full. In the case of merchants, this will also apply if there are unsettled claims from ongoing business relations or we have included one or more claims in a current invoice and a balance has been drawn and recognized. Assertion of the retention of title and our seizing the goods shall not be deemed withdrawal from the contract. The provisions of Sec. 326 BGB ["Bürgerliches Gesetzbuch": The German Civil Code] remain unaffected. Pledges or assignments to third parties are prohibited until the purchase price has been paid in full. The customer shall notify us without delay in the event of ceasing payment or seizing. The customer shall provide us with all necessary documents and information to enable us to assert our rights. The customer hereby grants us or an agent appointed by us access to its premises.
2. In relation to merchants, our proprietor right can be claimed for without withdrawal from the contract, § 449 para 2 BGB to be ineffective.
3. The customer is entitled to resell the goods in the ordinary course of business. The customer undertakes only to resell the goods subject to retention of title unless the goods are paid for immediately by the third party purchaser. The right to resale is lost in the event of the customer ceasing payment.
4. The customer hereby assigns to us all receivables from its purchasers arising from the resale, irrespective of whether the goods subject to retention of title have been processed or not. The customer is prohibited from coming to agreements with its purchasers to exclude or hinder our rights in any way. In particular, the customer may not enter into an agreement that voids or hinders the advance assignment of the receivable to us. Following assignment, the customer remains authorized to collect the receivable assigned to us. This does not affect our entitlement to collect the receivables ourselves. We nevertheless undertake not to collect the receivable as long as the customer meets its payment obligations. We may require the customer to inform us of the assigned receivables and debtors concerned, provide us with all information necessary to facilitate collection, hand over the related documents and inform the debtors of the assignment. If the goods supplied have been resold with other goods that do not belong to us, the amount of the customer's receivable from its purchaser equivalent to the delivery price agreed between us and the customer shall be deemed assigned to us.
5. Processing or transformation of goods subject to retention of title is performed on our behalf as manufacturer pursuant to Sec. 950 BGB without obligating us in any way. If the goods are processed with items not belonging to us, we become co-owners of the new item based on the value of the goods subject to retention of title in proportion to the other processed goods at the time of processing. If our goods are merged into or inseparably combined with other movable property to form a single item and the other item is deemed to be the main item it will be deemed agreed that the customer will transfer proportionate co-ownership to the extent that the main item belongs to us. The same applies *mutatis mutandis* to the item resulting from the processing, merging or combining as to the goods subject to retention of title.
6. We undertake to release the collateral to which we are entitled to the extent that it exceeds the secured receivables by more than 25% and to the extent that such receivables have not been settled.
7. Our retention of title is conditional in that ownership of the goods subject to retention of title automatically transfers to the customer upon settlement in full of our receivables and the customer is entitled to the assigned receivables.
8. We are not required to pay compensation for or to restore any damage caused or alterations made to premises, buildings, cultivated areas, fences, etc., in the event of the goods subject to retention of title being reclaimed.

F. Warranty for quality defects and compensation for damages

1. We are liable for recognizable or hidden defects within the periods defined below running from the date of dispatch from our factory or notification of readiness for dispatch, as a rule in such a way that we have the choice of reworking free of charge or resupplying goods free of defects. Subject to appropriate treatment and handling in accordance with our written instructions of the goods relating to which there is a complaint of alleged or actual defects, the periods are two (2) years from the aforementioned date of performance for all components of our products. In relation to merchants applies: If it is not reasonable for the customer to accept further reworking or resupplying of goods following three precedent attempts to rework or supply the same, the customer shall have the subsidiary right to a reduction in price.
2. Complaints must be made in writing and without delay, no later than fourteen (14) calendar days from the date of shipping or dispatch; this period does not apply to hidden defects. In the case of merchants, hidden defects shall be subject to the provisions of Sec. 377 HGB [“Handelsgesetzbuch”: German Commercial Code].
3. In the case of merchants, our liability for third party products shall be limited primarily to the assignment of liability claims against the supplier of the third-party products to which we are entitled. The customer is obliged to first take legal action to assert the liability claims assigned to it. In the event that claims recognized by a court against the manufacturer of the third party products become finally unenforceable, the liability provision contained in F. 1. will apply.
4. The customer shall return – freight and associated charges prepaid – standard and semi-standard products to our factory for the purpose of inspection and subsequent verification. Conclusions on whether a textile umbrella membrane is an actual or alleged (unreasoned) warranty claim are conducted on the basis of the **“Guidelines for Judging on Ready-Made Textile Awnings”** [“Richtlinien zur Beurteilung von konfektionierten Markisentüchern”] issued Jan. 2012 by the German »ITRS – Industrieverband Technische Textilien – Rolladen – Sonnenschutz e.V.«, Mönchengladbach, Germany (formerly: »Bundesverband Konfektion Technischer Textilien e.V.«, Krefeld, Germany).
5. We will bear the costs of reworking if the complaint is justified. If the complaint proves to be unjustified, the customer shall bear all costs arising from the inspection.
6. The customer shall grant us the time required and appropriate opportunity to perform all measures deemed necessary and to supply replacement parts. We will not be held liable for any delays caused by late delivery of replacement parts outside our sphere of influence.
7. We reserve the right to make minor changes customary for the industry or necessitated for technical reasons to quality, dimensions, colour, weight or due to design changes without prior information or announcement. However, we are not under any obligation to make changes of this kind to products already supplied. Optical changes that do not jeopardize or alter the lifespan or the purpose of the product are no justification for complaint.
8. We will not be liable for the consequences arising from any inappropriate alterations or additions made by the customer or a third party without our prior consent. In the event of replacement parts being supplied for the repair of products manufactured by us, our manufacturer’s liability – including item F. 3. – is restricted to the replacement parts supplied being free of defects. It does not extend to any negative consequences of improper installation or removal of the replacement parts supplied.
9. Our warranty and manufacturer’s liability is null and void in the event of our products being equipped with a roofing membrane made of anything other than the standard betex® material which we have tested in series production.
10. If our products are mounted, installed, erected, put into operation and used without employing our original parts and/or accessories contrary to our technical publications, offers and other manufacturer recommendations, irrespective of whether done with or without our knowledge, will automatically render our warranty and liability null and void ab initio and in toto.
11. Liability for defects does not extend to natural wear and tear, damage caused by improper or negligent treatment, inappropriate cleaning of textile membranes by owner-

users themselves, or by any third party commissioned by owner-user (failure to have them cleaned by the BAHAMA factory’s specialized maintenance division), excessive strain, unsuitable operating materials, force majeure, natural disasters, unsuitable foundations, chemical, electrochemical or electrical influences outside our sphere of influence or to any consequences arising therefrom.

12. We will not pay compensation for damages if a violation of contractual obligations on our part is only slightly negligent and the violation does not relate to a cardinal obligation. This does also apply to possible claims raised for the reason of delayed or non-delivery.

G. Return of transport packaging

1. In order to ensure the best possible protection from transport damage to our large BAHAMA® structures and technically associated goods supplied and to facilitate their storage in periods of seasonal temporary disuse, most of the packing we provide consists of extraordinarily durable cardboard tubes (Sec. 3 (1) No. 1 and No. 4 [“5. Verpackungsverordnung”: German 5th Ordinance on the Avoidance and Recovery of Packaging Waste] of 2nd April 2008).
2. The customer will review in each individual case whether it makes more economic sense to return the cardboard, dispose of it or use the cardboard tubes/transport packaging cardboard for storage purpose.
3. If the customer does not use the packaging for storage purposes or decides not to dispose of it, we agree to take back the original packaging used by us.
4. The return of the packaging is the responsibility of the customer. The customer shall return the packaging at its own expense. Any packaging sent back to us freight collect will not be accepted.
5. The packaging is to be returned to our factory at D-51580 Reichshof-Wehnath, Gewerbeparkstrasse 34. Returned package is taken back between the hours of 8.00 a.m. and 12.00 p.m. and 1.00 pm to 3 p.m., Monday to Thursday.
6. It is not permissible for the packing to be returned immediately to the carrier making the delivery.

H. Court of competent jurisdiction

1. The exclusive place of performance is Reichshof-Wehnath.
2. In the case of merchants, Waldbröl is the sole place of competent jurisdiction with regard to all disputes arising directly or indirectly from the contract.

I. Miscellaneous

1. All contracts with us only come into effect on the basis of these general terms and conditions.
2. We shall not be legally bound by any deviating terms of the customer not expressly recognized by us in writing. This will also apply even if we fail to contradict.
3. All disputes arising in connection with this contract are subject to the law of the Federal Republic of Germany.
4. Should one or more of the provisions of these general terms and conditions be invalid, the pertinent provisions of law shall apply. In all other respects, the remaining provisions will remain valid.

Bahama GmbH