

## GENERAL TERMS AND CONDITIONS

### I. Scope

1. Unless they are contrary to mandatory statutory provisions, these General Terms and Conditions (**T's & C's**) apply to all legal relationships of **BBQ Kitchen GmbH** (company register of the Regional Court of Wels, no. 553809 a; VAT ID no. ATU76828738) ("**BK**") and its **Customers** (purchasers; buyers; customers; prospects etc.) and they are of the essence regarding these legal relationships.
2. The valid version of these Ts & Cs is available on the BK homepage at <https://www.bbq-kitchen.com>. At the Customer's request, BK provides it with a copy of these T's & C's.
3. The Customers accept these T's & C's to be binding on them when establishing a legal relationship with BK by placing an order or accepting the order confirmation, but also, once again, by accepting the delivery, also with regard to all future transactions between the Parties.
4. BK expressly rejects any objections by the Customer, even if existing only in writing – in particular any objections included in its general terms and conditions. We hereby expressly object to all conflicting terms and conditions of the Customers contrary to BK's T's & C's.
5. Subsequent amendments and supplements to the contractual agreements and all ancillary agreements require BK's written confirmation to be valid and/or legally effective. BK may correct obvious spelling and calculation errors contained in any quotations, order confirmations, invoices, price lists, product descriptions, brochures, plans etc. at any time.
6. BK generally concludes its contracts with entrepreneurs. If BK concludes contracts with consumers, these T's & C's apply, too, unless applicability conflicts with mandatory consumer law provisions.

### II. Offer

1. BK's offers are subject to changes at all times and they are not binding. Descriptions of the delivery item and technical information are non-binding and shall not be considered guarantees of certain properties. When placing the order, the Customer makes a binding offer to conclude a contract.
2. BK may reject offers for assignments in writing within 8 days from receiving such order and without giving reasons for this.
3. The contract is deemed to be concluded only after BK transmitted an order confirmation to the Customer, but not later than upon delivery (ex works) and/or at the time when the goods are declared to be ready for dispatch. Should the order confirmation contents deviate from the purchase order, the Customer shall object to this within one week, in default whereof the contract will come into effect according to the order confirmation.
4. Information contained in catalogues, leaflets and similar documents and other written or oral statements of BK are valid only if they are expressly based on the contract. In the case of deviations, the offer and/or the order confirmation apply.
5. Any information in BK's catalogues, price lists and drawings and any weight and dimension data are thoroughly prepared. Nevertheless, errors, design and dimensional changes cannot be excluded; BK accepts no liability for them.
6. Unless expressly otherwise agreed, planning activities, sampling, material tests and cost estimates are non-binding and subject to charges. Should the costs increase by more than 15 % after the order was placed, BK will immediately contact the Customer. If costs increase of less than 15 % cannot be avoided, there is no need to notify the Customer thereof.
7. Any agreements on contractual penalties to the detriment of BK require the written consent of BK's authorised representatives.
8. Execution documents, including plans, sketches and other technical documents, samples, catalogues, brochures, illustrations and the like remain the intellectual property of BK at all times and are subject to the relevant legal provisions with regard to reproduction, imitation, competition etc. Any use, particularly the transfer, reproduction and provision, including the preparation of partial copies thereof, requires BK's express consent. Such documents are to be returned to BK at BK's request at any time, but in no case later than at the end of the business relationship.
9. The Customer indemnifies and holds BK harmless from and against

any violations of intellectual property rights by producing the contractual items.

10. Contracts for the performance of recurring obligations are valid for the term specified in the contract and may be cancelled by BK in writing at the end of a contractual year, subject to a 3-month notice period and unless expressly agreed otherwise. If the Customer fails to fulfil its payment duties, BK may cancel that contract for the performance of recurring obligations for cause at any time without a duty to pay compensation.
11. The provisions of sections 9 and 10 of the Austrian E-Commerce Act as amended are not applicable.

### III. Delivery

1. If the agreement concluded with the Customer contains no provisions in this regard, deliveries based on "EXW" according to the INCOTERMS 2020 (ex works/warehouse) are deemed to be agreed upon. Goods delivered on an "EXW" basis are deemed to be accepted. The risk of accidental loss and/or accidental deterioration passes on to the Customer upon EXW delivery or in the event of delayed acceptance by the Customer.
2. The delivery period starts in no case later than at the below dates:
  - the date of the order confirmation;
  - the date of fulfilment of all technical, commercial and other requirements imposed on the Customer;
  - the date on which BK receives a down payment or security to be provided prior to goods deliveries.
3. If BK is not responsible for the delivery, timely delivery depends on the notification of readiness for dispatch.
4. The goods are deemed delivered also if they are not immediately called off at the delivery date following BK's notification of readiness for dispatch.
5. Delivery times specified by BK and any contractual delivery dates are never binding. In the event of any delivery delays, the Customer shall grant a reasonable grace period of 4 weeks. BK may make partial deliveries.
6. Delivery periods will be extended in particular in the event of unforeseen obstacles, regardless of whether our business operations or those of any sub-suppliers are affected by them, such as operational disruptions, strikes, lockouts, transport disruptions, force majeure, closures requested by public authorities, import bans, pandemics etc.
7. BK is entitled to suspend or impede fulfilment of its own obligations at any time if it becomes apparent, after contract conclusion, that the Customer will fail to fulfil a substantial part of its obligations, in particular for the following reasons: (i) serious defects in its ability to fulfil the contract; (ii) serious defects concerning its credit standing; or (iii) its behaviour when preparing fulfilment or fulfilling the present or former contracts.
8. Claims for damages due to delayed deliveries are excluded to the extent legally permissible. In addition, the Customer waives all further claims due to delayed deliveries. Claims for contractual penalties are expressly excluded.
9. Packaging corresponds to specialist requirements and industry standards, with the Customer being responsible for disposing the packaging material.
10. Unforeseen costs for deliveries to the Customer, such as temporary storage or additional transport costs, will be borne by the Customer.
11. BK's products are generally supplied bearing a trademark – they represent branded products. Any amendments to this Agreement shall be made in writing.
12. In the case of contractual deliveries to the Customer:
  - BK determines the type of shipment;
  - BK may deliver the goods based on partial deliveries;
  - the goods are delivered to warehouses at ground level or accessible via a ramp;
  - the Customer provides staff required for unloading at its own expense;
  - the signature of any of the Customer's employees is considered a confirmation that the goods are complete and free from visible damage; and
  - the goods will be transported at the Customer's hazard and risk (damage; destruction; loss etc.) and the risk is transferred upon hand-over to the forwarder, haulage contractor or the

individual named by the Customer.

#### IV. Prices

1. All prices are indicated in Euro, exclusive of statutory value-added tax. Should a Customer still make a transfer to BK in a foreign currency, such amount shall be transferred which corresponds to the invoice amount in Euro plus applicable translation costs and/or other costs incurred in this connection.
2. The prices quoted by BK are EXW (ex works/ex warehouse) prices according to the INCOTERMS 2020 and – unless otherwise agreed for individual special products – exclude assembly, but include packaging.
3. In the case of deliveries against payment in foreign currencies, BK is in any case entitled to exercise an option at the due date in a way that BK may request payment in Euro or in the foreign currency originally agreed upon.
4. The Customer bears all taxes, contract preparation fees, export, import and implementation fees, customs and related charges, official commission fees and the like. In this respect, the Customer is also responsible for providing necessary certifications, confirmations and/or import documents, whatever their nature, and bears the related costs.
5. BK's prices are based on wage and material costs applicable at the time of order confirmation. If these costs increase at a later time, BK is entitled to adjust and charge these costs to the Customer. This applies also to other changes caused by taxes, customs duties or transport tariffs which BK cannot influence.
6. Final price calculation is based on the discounts valid on the day of delivery and/or contractually agreed upon. Discounts are granted only in the event that BK does not have to claim contractual purchase price payment in court (action, enforcement of rights etc.). Calculations included in the offer apply only if the Customer orders all the goods/the entire quantity on offer.
7. Discounts granted once only apply to the respective transaction and establish no legal claim for subsequent transactions. Special conditions granted within the scope of existing business relationships apply BK revokes them.
8. In any case, contractual prices apply for a maximum of two months from the date of BK submitting the offer.

#### V. Payment terms

1. BK's invoices are due for payment at the time of delivery or, at the latest, at the time of invoicing. The amount due for payment shall be credited to and available on the bank account indicated by BK on the due date at the latest. In the case of consumer transactions, placing the transfer order on the due date is sufficient for timely payment.
2. 50 % of the total order amount is due in the form of a down payment when placing the order. If the Customer intends to withdraw from the contract prior to the ordered goods being produced or if BK fails to fulfil the contract for other reasons not attributable to BK, the amount paid is deemed forfeited in favour of BK.
3. In the event of culpable payment delays, BK is entitled to charge statutory default interest from the due date to the amount of 9.2 percentage points above the valid base lending rate established by the Austrian National Bank, but at least 12 % per year.
4. Incoming payments are offset against the oldest receivables first, that is, against any costs incurred already (reminders, data storage and archiving costs, collection costs etc.), and after complete satisfaction of the first against any interest already accrued and, finally, against the outstanding principal amount.
5. BK is not obliged to accept any bills of exchange or cheques. However, if BK accepts such means of payment, we do so only on account of payment and only against reimbursement of any discount and collection costs by the Customer. BK does not consider this cash payments, either, which is why no cash discount can be granted. The original due dates will not be postponed in the case where BK accepts such means of payment. BK is entitled, at any time, to demand payment of the outstanding amount against return of these means of payment.
6. Prior to full payment of outstanding invoice amounts, including default interest, other expenses and costs, BK is not obliged to make any additional deliveries under any valid contract. If the Customer is in arrears with outstanding payments or if its financial situation deteriorates to a considerable extent, BK may demand cash payments for remaining deliveries from any valid contracts before

delivering the goods, with the period of payment no longer being applicable.

7. If BK becomes aware of circumstances giving reason to believe that the Customer's financial situation deteriorated and/or is at risk, BK is entitled to demand advance payments or the provision of a security at its own discretion.
8. In the event of delays with outstanding payments, all other claims which have not yet become due for payment are due for immediate payment, including possibly existing bills of exchange.
9. If the Customer fails to comply with a payment request, BK may retain the goods owned by itself (without this being equivalent to a withdrawal from the contract) or withdraw from the contract in whole or in part, in compliance with BK's rights or claims, in particular those concerning compensation for non-fulfilment.
10. The Customer has no right to retain any payments because of warranty claims or any other counterclaims not accepted by BK. Offsetting against the Customer's counterclaims is not permissible and we hereby object to any set-offs.
11. All complaints concerning invoices shall be made in writing within 14 days from invoicing, in default whereof invoices are deemed to be accepted. If the Customer wants to make any changes to the invoice which deviate from the order confirmation, the original due date continues to apply.
12. BK does not recognise any bans on assignments and any other contractual terms relating to the assignment of claims included in the Customer's general terms and conditions, and they are not binding for BK.
13. BK reserves the right to assign to third parties the claims arising in connection with the order and/or the delivery, independently of the due date (e.g. factoring). The subject matter of such assignments may be all claims arising from the delivery of goods and services related to BK's business operations specified in the contract, including all ancillary rights and property subject to reservation of title. Likewise, BK reserves the right to pledge to third parties any outstanding purchase price claims.

#### VI. Default of acceptance

1. The Customer is obliged to accept the deliveries and services provided by BK.
2. If the Customer totally or partially rejects the goods without BK being responsible for this, BK is still entitled to demand payment of the total order amount and the Customer is obliged to pay this in accordance with the contract concluded.
3. If the Customer is in default of acceptance, BK is entitled to store the goods at the Customer's expense and risk either with BK itself or with a third party. This does not affect BK's rights pursuant to sections 373 *et seq.* of the *UGB [Unternehmensgesetzbuch – Austrian Commercial Code]*.
4. BK's liability concerning deterioration or loss of goods stored at its warehouse is limited to cases of wilful intent or gross negligence.
5. The purchase price is due for payment after the pick-up period ended.

#### VII. Retention of title

1. Delivered goods remain the property of BK until all liabilities arising from the business relationship and the purchase price, including all ancillary fees (interest, costs, etc.), were fully paid.
2. The Customer may resell any goods which are still the property of BK only in the course of its ordinary business and only on the condition that BK's retention of title continues to apply. Other disposals concerning goods subject to retention of title, in particular transfers by way of security or pledges, are excluded and establish a duty for the Customer to pay damages.
3. In order to secure all claims of BK from the order, the Customer hereby assigns to BK all of its claims from reselling the goods subject to retention of title, also if these goods were processed, redesigned or mixed, for collateralisation and satisfaction purposes and hereby undertakes, at BK's request, to indicate the names of the debtors and the amounts of the respective claims against them, to provide all other information and documents required for the collection of claims and to notify the (third-party) debtors of the respective assignment. The Customer is obliged to appropriately record this in its books and/or its invoices immediately once the claims assigned to BK are established.
4. The Customer undertakes to notify the tax office of legal

transactions subject to charges and to bear any legal transaction fees incurred.

5. If the Customer fails to fulfil its payment obligations or any duties arising from retention of title by BK or if it fails to fulfil them on time, if it suspends its payments or if a court institutes insolvency proceedings concerning its assets, all claims to which BK is entitled against the Customer are due for payment, even if bills of exchange have longer validity periods. If the Customer fails to immediately pay the remaining debt, BK is entitled to request immediate return of its goods, excluding any rights of retention.
6. The Customer bears all costs arising from taking the goods back in possession. Without prejudice to the Customer's payment duty, BK is entitled to use the goods which BK took back in possession in the best possible way. Proceeds remaining after deducting the costs, including utilisation costs, will be offset against the Customer's overall debt, and possible excess proceeds will be disbursed to it.
7. If third parties attach the goods, the Customer shall inform the executory officer about BK's retention of title and notify BK of such attachment by means of a registered letter. Any costs for intervention are to be borne by the Customer; any rights of retention and offsets are excluded. Taking back the goods does not, in itself, constitute withdrawal from the contract; instead, withdrawal requires a separate declaration.
8. The Customer processes the goods subject to retention of title always in the name and on behalf of BK. If the goods subject to retention of title are processed, BK acquires joint ownership of the new object in proportion to the value of the goods supplied by BK. The same applies if goods subject to retention of title are processed or mixed with other objects not belonging to BK. The Customer stores the goods subject to (co-)ownership by BK free of charge.

#### VIII. Complaints, warranties and damages

1. BK guarantees that the delivered goods meet the quality levels specified in the contract with the Customer.
2. If the contract concluded with the Customer on the quality of the goods contains no details, standard average quality levels are deemed to apply. No guarantee is granted for deviations with colours caused by production and material.
3. The Customer is obliged to immediately inspect the goods and to provide detailed defect notifications. **Transport damage shall be reported to BK immediately in writing.**
4. General defect notifications shall be submitted within eight calendar days from the delivery date, and defect notifications concerning faulty production or material shall be submitted within one month from the delivery date at the latest. Delayed defect notifications lead to the loss of all claims, in particular any warranty claims, damage compensation claims and the right to avoidance on account of mistake relating to defects.
5. The reversal of the burden of proof provided for under sec. 924 of the *ABGB* [*Allgemeines bürgerliches Gesetzbuch* – Austrian Civil Code], according to which BK is obliged to produce evidence during the first six months from delivery, is excluded for all transactions with entrepreneurs. The warranty period amounts to 24 months from the time of delivery. Should BK be obliged to remedy a defect, the warranty for the rectified defect amounts to six months from the date of rectification.
6. If BK is unable to improve its services or subsequently deliver any missing goods, the Customer may return the goods and withdraw from the contract only if it obtained BK's express written consent. The Customer shall pay a 20 % handling fee for any goods it returns. Goods which the Customer rejected are to be returned to BK for inspection at the Customer's expense.
7. If inspections show that manufacturing or material defects exist, BK shall, at its discretion, either make a replacement delivery or issue a credit note. Even if the Customer would be entitled to request a price reduction and/or rescission, these warranty remedies may be replaced by BK by improvement (repair or amendment of missing goods) or replacement. This, however, does not include electronic wear parts for which warranty is completely excluded. Any additional claims, in particular claims for compensation for damage resulting from defects (such as loss of profit, loss of production, assembly and disassembly, lifting devices, scaffolds, etc.), are excluded and the Customer will pay such amounts of compensation.
8. The warranty claim ceases to exist in the event of modification, processing, re-assembly or improper treatment of the goods delivered.

9. The Customer is obliged to observe product information and installation instructions additionally provided. BK is in no case liable for any defects or damage resulting from non-compliance with these instructions.
10. BK is not liable for any costs which the Customer incurred when rectifying the defect itself.
11. BK refuses to take back any special offers, special constructions and non-standard parts.
12. Should the Customer be liable towards any of its clients under the warranty, recourse against us according to sec. 933b of the *ABGB* is excluded.
13. A right to challenge the contract between BK and the Customer based on *laesio enormis* pursuant to sec. 934 of the *ABGB* is excluded at the Customer's expense, unless the Customer is no entrepreneur.
14. BK is only liable to pay compensation for damage due to breaching the contractual or legal obligation if BK is guilty of intent or gross negligence. This exclusion of liability does not include liability for personal injuries. Liability is in each case excluded if any damage can be attributed to acts or omissions of individuals not attributable to BK, in particular to works performed by other professionals.
15. We hereby exclude claims for compensation of loss of profits and claims for compensation for expense related to operational interruptions, loss of production or indirect damage due to the delivery of goods in breach of the contract. Liability for property damage is excluded on the condition that BK acted in a slightly culpable manner only.
16. In any event, the claim for damages ceases to exist once the delivered goods are processed or resold without BK being given the opportunity to check them for lack of conformity. Any claims for liability or recourse are limited to the amount of € 20,000.00 and become time-barred within six months from the time when the injured party had the possibility, for the first time, to become aware of such damage and of the party liable for compensation.
17. BK and the Customer waive applicability of sec. 1298 of the *ABGB* to the Customer's claims for damages based on defectiveness of the item itself (claims for damage resulting from defects expressly excluded).
18. In the event of any violations of assembly and/or operating instructions, all claims resulting from guarantees, warranties and damages cease to exist and BK is exempt from any liability.

#### IX. Product liability

1. If the Customer is no final consumer, the Customer's claims for recourse against BK pursuant to sec. 12 of the *PHG* [*Produkthaftungsgesetz* – German Product Liability Act] are excluded. This does not apply if the individual entitled to recourse produces evidence showing that BK is responsible for the error or that BK, at least, culpably caused that error because of gross negligence.

#### X. Right of withdrawal of the customer

1. If the Customer is a consumer, it has the right of withdrawal according to sec. 3 of the *KSchG* [*Konsumentenschutzgesetz* – Austrian Consumer Protection Act], sec. 3a of the *KSchG* and sec. 11 of the *FAGG* [*Fern- und Auswärtsgeschäfte-Gesetz* – Austrian Act on Non-Face-to-Face Transactions].
2. Withdrawal in other cases is possible only under certain circumstances and based on BK's written consent, unless such withdrawal is based on a legal claim.

#### XI. Documents (e.g. invoices, rejection of the contract etc.)

1. Documents which are delivered to the address last indicated by the Customer are deemed to be served in any case, unless the Customer notified BK in writing of any changes to its address.

#### XII. Cost estimates

1. Cost estimates are non-binding, unless the parties expressly agree upon them being in writing. For the preparation of binding cost estimates, the Customer shall pay the contractual fee, but in each case a reasonable fee.

#### XIII. Duties of the customer

1. BK's Customers may resell to final consumers the products they purchased from BK. The contractual partners are, therefore, the Customer of BK and the final consumer.

2. In the event of resale of the products, BK's Customers undertake to provide sufficient exhibition spaces and give appropriate advice for these final consumers.

3. Furthermore, BK's Customers are obliged to offer delivery and assembly services for the final consumers at their own expense. BK is not liable for delivery delays caused by BK's Customer in the event that BK is unable to meet delivery dates for any reason. BK's Customers are not entitled to commission BK with delivering the goods to or to agree upon such delivery by BK with final consumers. Delivery and installation services shall be guaranteed by BK's Customers.

Marchtrenk, January 2022

#### **XIV. Commercial agents; debt collection**

1. BK's Customers are no commercial agents in accordance with or in analogy to the Austrian Act on Commercial Agents [*Handelsvertretergesetz*] (Federal Gazette no. 88/1993 as amended). BK does not commission the Customer with brokering or concluding transactions, neither in its name nor on its behalf. BK expressly prohibits its Customers from concluding any transactions on account and on behalf of BK. Should such an agreement be concluded nonetheless, the Customer shall immediately notify BK of this transaction. BK and the Customers did not agree, in favour of BK, upon a ban on competition, a ban on selling third-party products, a right to give instructions and/or a right to control, mandatory pricing rules or minimum purchase quantities for the Customers. Customers may freely structure their business and they are not involved in BK's operations.
2. BK's representatives are not authorised to collect any debts. Payments to BK with a fully discharging effect for Customers may, therefore, only be made to BK's bank accounts which they indicated or to bodies of our company recorded with the company register, unless the debt collector is able to identify by producing a written authorisation of the BK management. Cash payments at BK's business premises are possible only if a receipt is issued.

#### **XV. Final provisions; place of jurisdiction; applicable law**

1. Should single or several provisions of these T's & C's be or become totally or partially invalid, validity of the remaining provisions is not affected by this.
2. These totally or partially invalid provisions will be replaced by provisions which are usually applied in similar cases.
3. Unless these T's & C's include separate agreements, the provisions of the *ABGB* and the *UGB* apply.
4. BK reserves the right to amend these T's & C's at any time. Amendments apply, from the time of their notification to the Customer, to all legal relationships between BK and the Customer established thereafter.
5. Verbal agreements are not valid. Supplements shall be made in writing and be confirmed by BK.
6. The exclusive place of fulfilment is BK's registered office in Marchtrenk. The Parties agree upon the competent court having subject-matter jurisdiction in WELS to be the venue for all disputes arising from the contractual relationship. However, as an alternative, BK may refer to the competent court at the Customer's place of business and/or residence.
7. Any questions concerning the interpretation of these T's & C's, of all contracts concluded by BK with the Customer and the fulfilment of the rights and obligations regulated therein are exclusively subject to Austrian adjective and material law, with the express exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and other reference norms.

#### **XVI. Data protection**

1. The Customer agrees that its personal data (name; address; date of birth) will be processed by BK for the purpose of providing information on new products and services by e-mail. The Customer also agrees to BK processing its personal data for the purpose of market and opinion research activities. This data and the results of the surveys will not be passed on to third parties. In this context, the Customer expressly agrees to be contacted by BK via e-mail. The Customer has the right to object to such use at any time by sending a letter to the registered office of BK, A-4614 Marchtrenk, Welsler Straße 33. This address also applies to all matters relating to the GDPR. Our Privacy Notice in accordance with the General Data Protection Regulation (EU) is available for download on BK's website at <https://www.bbq-kitchen.com>.