

General Terms of Sale and Delivery

The following general terms of sale and delivery of BJ-Gear A/S (hereinafter "Company") shall apply in respect to Company's sale and delivery of goods and/or services to the purchaser (hereinafter "Purchaser").

1. TECHNICAL SPECIFICATIONS

1.1 Illustrations contained in our catalogues and at our homepage (www.bj-gear.com) as well as dimensions, weight and performance, etc. stated therein are subject to confirmation, and Company reserves the right without prior notice to make changes in the manufacture or sale of products.

2. COPYRIGHT

2.1 All drawings and technical documentation handed over to Purchaser before or after the making of the agreement shall remain the property of Company in accordance with the Danish Marketing Practices Act. Such documents may not without the permission of Company be used by the buyer or be copied, reproduced or handed over to or otherwise be brought to the knowledge of third parties.

3. OFFER AND RESERVATIONS REGARDING DELIVERY

3.1 The offer remains open until the expiry of the time-limit stated in the offer, and acceptance of the offer must have reached Company within the time-limit. Where no time-limit for acceptance is stated in the offer, acceptance must reach Company within a reasonable period of time.

3.2 Unless otherwise directly stated in the offer, all offers are subject to the goods being unsold at the time Purchaser's acceptance is received by Company. If the goods contained in the offer have been sold at the time Purchaser's acceptance is received by Company, Company shall without undue delay inform Purchaser hereof. Company may submit a new offer to Purchaser e.g. with different price and new delivery date than contained in the original offer. If Purchaser cannot accept such new offer, Purchaser shall immediately inform Company hereof.

4. PRICES AND TERMS OF PAYMENT

4.1 The prices stated are the ones ruling on the date of the offer.

4.2 Unless otherwise stated in Company's order confirmation or other written agreement, the terms of payment are 30 days net from date of Company's invoice. Where payment is effected after the due date, interest is charged at the rate of 1.5 % per month.

4.3 Where the terms of payment are not observed, Company shall be entitled to dispatch future consignments COD.

5. DELIVERY AND LIABILITY FOR DELAY

5.1 In the absence of other agreement in writing all goods are delivered ex works, and dispatch is effected for Purchaser's own account and risk. The method of dispatch is decided by Company at its own discretion and without liability for any carriage differences.

5.2 Company shall not be liable for such obstacles to or delay of delivery which are due to war, blockade, strike, lockout, transport accidents, fire, flood, extraordinary wind and weather conditions, import or export restrictions, supply problems or other events which are an impediment to supplies, including problems in connection with the supplies from sub-suppliers ("Force Majeure").

5.3 If a delay is caused by Force Majeure, or due to acts or omissions on the part of Purchaser, the delivery date shall be extended by a period which is reasonable taking into account the circumstances in the case. If a delay in delivery or completion, caused by reasons as stated in 5.2, can be expected to last longer than three (3) months, Purchaser, as well as Company, shall be entitled to cancel the purchase order without paying compensation.

5.4 If a specific delivery date has been agreed upon and Company does not deliver the goods and/or services on time – due to other reasons than those mentioned in clauses 5.2 and 5.3 - Purchaser is entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages are payable at a rate of 2 % of the purchase price for the delayed part of the delivery/service for each complete week of delay. The liquidated damages shall not exceed 10 % of the purchase price of the delayed goods/services. Company shall in no event be obliged to pay more than DKK 50,000 in liquidated damages to Purchaser per calendar year due to delay.

The liquidated damages become due at Purchaser's written demand. Purchaser loses the right to liquidated damages if no claim has been lodged in writing for such liquidated damages within three (3) months after the time when delivery should have taken place.

5.5 If Purchaser is entitled to maximum liquidated damages under clause 5.4 and the delayed goods/services are still not delivered, Purchaser may by notice in writing terminate the purchase order in respect to the delayed goods/services.

5.6 Besides liquidated damages according to clause 5.4 and termination according to clause 5.5, Purchaser shall not have any other legal remedies available due to the delay. Besides liquidated damages according to clause 5.4, Company shall not be liable to pay damages or compensation whatsoever towards Purchaser due to the delay.

5.7 The above limitations in Company's liability for delay do not apply to the extent that Company has caused the delay due to gross negligence or wilful misconduct.

6. LIABILITY FOR DEFECTS

6.1 PURCHASER'S EXAMINATION:

6.1.1 In accordance with industrial standards, Purchaser has an obligation to examine the goods and/or services, or cause them to be examined, within as short a period as is practicable in the circumstances.

6.2 NOTIFICATION:

6.2.1 Purchaser loses the right to rely on lack of conformity of the goods or service, if Purchaser does not give notice to Company specifying the nature of the lack of conformity within 8 calendar days after Purchaser has discovered it or ought to have discovered it. In any event, Purchaser loses the right to rely on lack of conformity of the goods or services, if Purchaser does not give Company notice thereof at the latest within a period of 12 (twelve) months from the delivery date.

6.2.2 If the goods are used more intensely, e.g. increased load, surrounding temperatures or speed, than agreed upon or as could be foreseen by Company at the time of acceptance of Purchaser's order, the durability and absolute defects notification period shall be reduced proportionally.

6.3 DEFECT INVESTIGATION:

6.3.1 If Purchaser has notified Company of a defect within the notification time limits in clause 6.2, Purchaser is – unless otherwise agreed with Company – obliged to send the defective goods to Company for technical investigation in order for Company to agree or reject that the goods are defective. The transportation costs are at Purchaser's risk and expense.

6.3.2 Company is not liable for defects arising out of materials provided by, or a design stipulated or specified by, Purchaser.

6.3.3 Company is only liable for defects which appear under the conditions of operation under proper use of the goods.

6.3.4 Company's liability does not cover defects caused by occurrences after the risk in the goods has passed to Purchaser. For example, Company's liability does not cover defects which are caused by faulty maintenance, incorrect use or installation from Purchaser's side (or their customer's or other third party's side), by alterations undertaken without Company's written consent, or by faulty repairs by Purchaser (or their customers or other third party). Finally, Company's liability for defects does not cover normal wear and tear or deterioration.

6.4 REMEDY:

6.4.1 If Company accepts that the goods in question are defective, Company will, within reasonable time and at no cost for Purchaser, repair the defective goods or replace the defective goods with new non-defective replacement-goods, whichever is cheapest for Company, provided that repair and replacement both solve the defect equally well from a technical perspective.

6.4.2 If no defect is found for which Company is liable, Company is entitled to compensation for the work and the costs which Company has as a result of the defects notification and technical defect investigation.

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6.4.3 The transportation costs for sending the repaired or replaced goods to the original place of delivery is for the risk and expense of Company. If Purchaser wants the repaired or replaced goods to be sent to a different location than the original place of delivery, any extra costs regarding such transportation to a new destination (e.g. Purchaser's customer's premises) is for the expense of Purchaser and will be invoiced by Company.

6.4.4 All labour and all costs regarding dismantling of defective goods from the equipment it was installed as a component in (the "End-Product"), re-installation of repaired or replaced goods in the End-Product and/or necessary intervention in other equipment than the goods, including the End-Product, is for the risk and expense of Purchaser.

6.4.5 Company is not liable for any costs for sending out staff to the defective goods or the End-Product, for tracing, examination, analysis or the issue of notices regarding the defective goods or the End-Product.

6.5 UNSECCESFUL REMEDY:

6.5.1 If Company fails to fulfil its obligation to repair or replace defective goods pursuant to clause 6.4 or fails to complete it within reasonable time, Purchaser may choose to:

- a) have the necessary remedial work carried out and/or to have new replacement-parts manufactured by a third party at the expense of Company; or
- b) to terminate the purchase order if the defect is considered substantial and demand a refund of the purchase price for the defective goods in question.

6.5.2 Company's obligation to reimburse Purchaser's costs according to clause 6.5.1 shall in no event exceed the purchase price for the defective goods in question, and Company shall not be liable for the costs in clauses 6.4.4 and 6.4.5 or any transportation costs related to the repair or replacement of the defective goods.

6.6 WAIVER OF LIABILITY FOR DEFECTS:

6.6.1 Save as stipulated in clause 6.1-6.5, Company shall have no liability for defects and shall not be liable to pay damages according to applicable law. This applies to any direct or indirect loss the defect may cause, including but not limited to loss of profit, loss of turnover, loss of production, loss of reputation, costs for legal advisors and other advisors, any loss due to recall and any other consequential economic loss.

6.6.2 The limitations in Company's liability for defects do not apply to the extent Company have caused the defect due to gross negligence or wilful misconduct.

7. ALLOCATION OF LIABILITY FOR PERSONAL INJURY AND PROPERTY DAMAGE (INCLUDING PRODUCT LIABILITY AND/OR TORT LIABILITY)

7.1 Personal Injury and Physical Damage to Consumer Property:

Company shall indemnify and hold Purchaser harmless, if Purchaser is liable to pay damages for personal injury (or death) and/or damage to consumer property caused by Company's goods/services, provided that Company is liable towards Purchaser according to applicable law, including applicable law on product liability and/or tort liability. If Company's goods/services have been installed as a component in an End-Product fully or partly manufactured by Purchaser, Company's aggregate annual liability towards Purchaser for claims due to personal injury (or death) and/or damage to consumer property shall in no event exceed DKK 10,000,000 (ten million) per calendar year, cf. the Danish Product Liability Act, section 11(2).

7.2 Physical Damage to Non-Consumer Property/Products/Services:

Company is liable to pay damages to Purchaser for physical damage caused by Company's goods/services to property and other equipment than the delivered goods/services – including damage to the End-Product which the goods/services are installed as a component in – provided that Company is liable towards Purchaser according to applicable law, including applicable law on product liability and/or tort liability. However, Company's liability for such loss due to physical damage to non-consumer property is limited as set forth below:

Company's liability to pay damages for Purchaser's loss due to damage to property and other equipment (including the End-Product) cannot exceed DKK 1,000,000 (one million) per damage and Company's aggregate annual liability per calendar year can in no event exceed DKK 2,000,000 (two million). In case of claims made in consequence of more than one case of damage occasioned by the same liability entailing conduct and regarding more than one calendar year ("series of damage") Company's aggregate liability for such claims cannot exceed DKK 3,000,000 (three million) in total.

Company shall in no event be liable towards Purchaser for any indirect loss, including but not limited to loss of profit, loss of turnover, loss of production, loss of reputation, costs for legal advisors and other advisors, any loss due to recall and any other consequential economic loss.

If the delivered goods/services cause damage to the End-Product in which they are installed as a component, Company is not liable for the following costs:

- a) costs for sending out staff to the defective goods or the End-Product, for tracing, examination, analysis or the issue of notices regarding the defective goods or the End-Product;
- b) any extra freight costs due to the defective goods or the End-Product being situated elsewhere than the original place of delivery.

7.3 Purchaser must indemnify and hold Company harmless for any claims for damages, for which claim Company is liable to pay damages towards Purchaser's customers or third parties, if such claim has been limited or excluded by Company towards Purchaser according to Clause 7.1 and/or 7.2.

7.4 The limitations of Company's liability shall not apply to the extent that Company is guilty of gross negligence and/or wilful misconduct or to the extent such limitation is prohibited under mandatory law.

7.5 If a claim for loss or damage as described in Clause 7 is raised by a third party against either Party, such Party must forthwith notify the other Party thereof.

8. THIRD PARTY INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS

8.1 In case a third party asserts a claim against Purchaser based on Company's goods/services allegedly infringing such third party's intellectual property rights ("IPR"), Purchaser shall notify Company hereof immediately.

8.2 Company has the right, but not a legal obligation, to take over the defence (including all costs and expenses) of such IPR-infringement claim against Purchaser.

8.3 In case of such third party IPR-infringement claim Company is liable towards Purchaser in accordance with applicable law, provided that the goods/services do in fact infringe such third party's intellectual property rights. However, Company's liability towards Purchaser due to a third party IPR-infringement claim, including any legal remedy available under applicable law and liability to pay damages for loss or costs incurred by Purchaser, shall in no event exceed DKK 100,000 per infringement claim. Company's aggregate annual liability per calendar year towards Purchaser due to third party IPR-infringement claims shall in no event exceed DKK 200,000.

The limitations in Company's liability regarding third party IPR-infringement claims shall not apply to the extent Company has caused the infringement due to gross negligence or wilful misconduct, or to the extent such limitation is prohibited under applicable mandatory law.

9. GOVERNING LAW AND ARBITRATION

9.1 These General Terms of Sale and Delivery and either party's rights and obligations regarding Company's sale and supply of goods/services to Purchaser as well as any claim arising out of such sale and supply shall be governed and construed according to Danish law.

9.2 All disputes, controversies or differences that may arise between the Parties, and which are not settled voluntarily, shall be settled:

- a) by the ordinary courts of Denmark with the District Court of Aarhus as first venue, if Purchaser is domiciled within the EU or Norway, Iceland, Switzerland or United Kingdom; OR
- b) by arbitration in Copenhagen by the Danish Institute of Arbitration (Danish Arbitration) in accordance with Danish Arbitration's simplified rules of procedure, if Purchaser is not domiciled within the EU or Norway, Iceland, Switzerland or United Kingdom.

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