



BETTER CONTROL. BETTER ENVIRONMENT.

General Terms and Conditions of Sale and Delivery of Binder NA Inc.

These General Terms and Conditions of Sale and Delivery (these "Terms") are applicable to all U.S. customers "Customers" and each, individually, "Customer") of Binder NA Inc., a Delaware corporation having its principal place of business at 350 Fifth Avenue, Suite 5220, New York, NY 10118 (Company").

1 Offers

Our offers are non-binding. Contracts shall only be concluded as a result of our written order confirmation or delivery. Our employees are not authorized to enter into any verbal collateral agreements or to make any verbal commitments or to alter these Terms to our disadvantage. Technical data, figures, drawings, weights and dimensions that are part of the offer are binding only insofar as this is confirmed in writing. The right is reserved to modify designs. The customer shall be responsible for checking the usability of our product.

2 Delivery Period

The delivery period shall begin upon shipment of the order confirmation, however not before clarification of all order execution details and receipt of the documents and permits to be provided by the customer, as well as of an agreed deposit. The delivery period shall be deemed to have been observed if, prior to expiry of the stipulated period, the product has been placed at disposal in the respective plant or readiness for dispatch has been notified.

Change requests by the customer shall extend the delivery period appropriately until we have checked their feasibility and by the period necessary to implement the new specifications in the production process. Upon delay in delivery, should we, our legal representatives, or vicarious agents have acted with slight negligence, our liability shall be limited to max. zero point five percent (0.5%) per completed week and to a total of max. five percent (5%) of the value of the order delivered late. The right to claim damages instead of delivery in accordance with paragraph 11 shall remain unaffected.

3 Force Majeure

Company shall not be liable to customer or any other person for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not

limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, pandemics, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, acts or regulations or priorities of the federal, state or local governments.

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When the event operating to excuse performance by either party shall cease, this Agreement shall continue in full force until all deliveries have been completed.

4 Partial Deliveries

We are entitled to make reasonable partial deliveries.

5 Shipment and Passage of Risk of Title and Risk of Loss

For shipment, we choose, at our discretion, the safest and most inexpensive solution. Title to and risk of loss for the Products shall pass to customer as soon as we hand over the goods to the transport company or, should shipment be delayed through no fault of ours, as soon as we have notified the customer of readiness for shipment and this even if we have also taken over other services, e.g., the shipping expenses or transportation and installation by our own transport personnel. Should shipment be delayed through no fault of ours:



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- we shall store the goods at the expense of the customer; in the case of storage in our respective works, we shall charge a monthly fee of at least zero point five percent (0.5%) of the amount of the invoice for the stored delivery,
- after setting a reasonable period of grace and the fruitless expiry of same, we shall have the right to withdraw from the contract or to demand damages instead of the payment,
- the customer shall, in particular, bear the costs and risks arising from non-timely instructions and non-timely completion of the necessary formalities incumbent upon him.

At the latest, sixty (60) days after notification of readiness for shipment, irrespective of the invoicing of the storage costs, we shall be entitled to invoice the goods against transfer of ownership by way of security.

6 Prices

The prices are understood to be ex our respective distribution point, excluding packaging, freight, insurance, and the value added tax applicable in each case at the time the invoice is issued. The Incoterms 2020 shall apply. Reasonable price increases may be made should the material and work costs taken as a basis for the calculation have increased considerably since the order was accepted.

7 Payments

Payments are to be made within thirty (30) days from the date of the invoice without any deduction, free our payments office. Payments shall be deemed to have been made only up to the amount that we can freely dispose of at a bank. We shall accept cheques and bills of exchange only on account of payment: discount charges and expenses shall be borne by the customer. Same shall be payable immediately.

In case of delayed payment, we shall, without issuing a reminder, charge interest payable after due date at the rate of eight (8) percentage points above the basic interest rate, however, at least ten percent (10%).

Should justified doubt arise as to the customer's ability to pay due to e.g., a sluggish mode of payment, arrears, protesting of cheques or bills of exchange, we shall be entitled to demand securities or cash payment concurrently against delivery. Should the customer not comply with this demand within a reasonable period of time, we may withdraw from the uncompleted portion of the delivery contract. The fixing of a time limit shall be

superfluous should the customer be manifestly incapable of providing security, e.g., should application have been made for insolvency proceedings to be opened with regard to the assets of the customer.

The customer may only offset claims to the extent that the counterclaims are uncontested or have been upheld by a court of law. In case of contested complaints regarding the goods, he shall not be entitled to withhold or reduce the payment of due invoice amounts. Setting off against counter-claims of any type whatsoever shall be excluded.

8 Retention of Ownership / Security Interest

We retain ownership of the goods delivered until receipt of all payments and until the cheques and bills of exchange accepted based on the business relationship with the customer have been irrevocably credited.

Should a current account exist, the retention of ownership shall extend to the acknowledged balance.

As security for the timely payment and performance of all customer's indebtedness to Company, customer hereby grants to Company a first priority security interest in the product following delivery thereof to customer ("Collateral"). Such Interest shall remain in force until payment in full of the entire purchase price for the product and any other amounts due to the Company by customer.

If so requested by Company, customer shall deliver to Company, in form and substance satisfactory to Company, and duly executed as required by Company, financing statements and other security interest perfection documentation in form and substance satisfactory to Company, duly filed under the Uniform Commercial Code in all jurisdictions as may be necessary, or in Company's opinion, desirable, to perfect Company's security interest and lien in the Collateral, in order to establish, perfect, preserve and protect Company's security interest as a legal, valid and enforceable security interest and lien, and all property or documents of title, in cases in which possession is required for the perfection of Company's security interest.

Upon mixing and combining with other goods, Company shall acquire co-ownership of the new goods at the ratio of the invoice value of the goods subject to retention of title to the other materials.



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The customer shall be obliged to insure the goods subject to retention of title adequately at the new value against loss and damage, at his own expense. The insurance policy as well as proof of payment of the premiums are to be submitted to us upon request. The customer shall even now assign to us his claims from the insurance policies.

9 Rights to Documents and Maintenance of Secrecy

Proprietary and industrial property rights to our drawings and other documents shall, in any case, remain with us. Same may not be made accessible to third parties.

10 Liability for Defects

Defects in the goods supplied are to be reported in writing without undue delay, at the latest, however, eight (8) days after receipt of the goods, in the case of hidden defects, at the latest three (3) days after detection. Should these deadlines be exceeded, all claims and rights arising from liability for defects shall lapse. The warranty period begins on the date of delivery of the product to customer, and continues to be in effect for twelve (12) months from equipment start-up or eighteen (18) months from delivery, whichever occurs first.

In case of justified complaints, we shall, at our discretion, repair the goods or supply a replacement. Should same not take place within a reasonable period of time, should the replacement delivery exhibit defects, or should the repair come to nothing, the customer may, after fruitless expiry of a reasonable period of grace, demand a price reduction or – insofar as the defect is not insignificant – withdraw from the contract and, in accordance with paragraph 11, demand damages instead of performance. An extension or recommencement of the guarantee period shall not take place due to the remedying of a defect.

The costs of supplementary performance incurred due to the fact that, after delivery, the purchased article has been brought to a place other than the business establishment of the customer, will not be borne.

The liability for defects of the seller shall apply only provided the assembly, operating and maintenance instructions are observed precisely. The liability for defects shall be excluded to the extent legally permissible in the case of improper storage, handling, maintenance or repair and normal wear.

11 General Liability

UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF EARNINGS, PROFITS, REVENUE, GOODWILL OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION BASED UPON EQUITY, CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY CASE LAW OR STATUTE, OR OTHERWISE, EVEN IF PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING THE TERMS AND CONDITIONS SET FORTH IN THE PREVIOUS PARAGRAPH, COMPANY'S LIABILITY – WHETHER BASED UPON CONTRACT, TORT, EQUITY, NEGLIGENCE OR ANY OTHER LEGAL CONCEPT – SHALL IN NO EVENT EXCEED THE VALUE OF CUSTOMER'S ORDER TO WHICH THE DAMAGES ARE PERTAINING TO, AS DESCRIBED ON THE ORDER FORM, OR THE ORDER VALUE FOR ONE (1) CALENDAR YEAR, WHICHEVER AMOUNT IS LOWER. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN COMPANY AND CUSTOMER IN AN EQUITABLE MANNER, THAT COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

IN JURISDICTIONS THAT LIMIT THE SCOPE OF OR PRECLUDE LIMITATIONS OR EXCLUSION OF REMEDIES OR DAMAGES, OR OF LIABILITY, SUCH AS LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR DO NOT ALLOW IMPLIED WARRANTIES TO BE EXCLUDED, THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE, COUNTRY OR OTHER JURISDICTION.

Should the customer withdraw from the order without any reason or should he not fulfil the contract, we may demand 25% of the order amount as damages. The right of both parties to enforce a claim for verifiable deviating damage shall remain reserved.



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12 Transport Packaging and Old Equipment

We shall take these back at the customer’s expense unless the customer waives this option. Transport packaging and old equipment are to be returned clean, free of extraneous matter and sorted according to type. Otherwise the customer shall bear the additional expenses.

13 Commissioning

The commissioning must be carried out by a technician of/ or appointed by Binder Engineering Group and is included in the quoted price including a one-time return journey (based on man-days on site, max. 10 h/day, travel expenses included). If the duration of the commissioning should be extended due to the fault of the customer, the additionally occurring costs (time, multiple journeys etc.) will be charged according to the respective valid hourly rates. It shall be the responsibility of Binder Engineering GmbH, the parent of Binder NA Inc., to provide the service technician and the services defined herein as an agent on behalf of Binder NA Inc.

14 Arbitration, Governing Law

Any controversy or claim arising out of or relating to this Agreement, or the negotiation or breach thereof, shall be exclusively settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association (“AAA”). The award shall be final and binding. Judgment upon the award rendered by the arbitrator or the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be held in Charlotte, North Carolina, shall be conducted in the English language, and shall be conducted (i) if the amount in dispute is less than two hundred fifty thousand U.S. Dollars (\$250,000 USD), before a single arbitrator determined by a mutual agreement between Company and customer, or if no agreement can be reached, then selected by the AAA, or (ii) if the amount in dispute is two hundred fifty thousand U.S. Dollars (\$250,000 USD) or more, before three (3) arbitrators. The arbitrator(s) shall make detailed findings of fact and law in writing in support of his, her or their decision, and shall award reimbursement of attorney’s fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate. The losing party shall reimburse the prevailing party for reasonable attorneys’ fees and disbursements, the costs of the arbitration (including but not limited to the fees and expenses of the arbitrator and expert witnesses) and the costs incurred by the prevailing party in

successfully seeking any preliminary equitable relief or judicially enforcing any arbitration award.

This Agreement shall be governed by and construed in accordance with the law of the State of North Carolina, without giving effect to principles of conflict of laws.

15 Miscellaneous

If any provision contained in this Agreement is held to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Agreement, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Agreement by one party to the other, the remaining provisions of this Agreement shall also be modified to the extent necessary to equitably adjust the parties’ respective rights and obligations hereunder.

In the event of a violation or threatened violation of Company’s proprietary rights, Company shall have the right, in addition to such other remedies as may be available pursuant to law or this Agreement, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Company would suffer irreparable harm.

The parties hereto are independent contractors and nothing in this Agreement shall be construed as creating a joint venture, employment or agency relationship between the parties.

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