

**Standard terms of BURKHARDT+WEBER Fertigungssysteme GmbH (Manufacturing systems)****1. General introduction**

- 1.1 Our General Terms and Conditions are valid for all business relations with our business partners and suppliers (thereinafter referred to as "Supplier"). The General Terms and Conditions apply when the business supplier (§14 BGB) represents a legal person of public law or a public law entity only.
- 1.2 The General Terms and Conditions of Purchase apply for contracts for the sale and/or supply of movable items (also referred to hereinafter as "goods"), whether the Supplier produces the Goods itself or buys them from sub-suppliers (§§ 433, 651 BGB). The General Terms and Conditions of Purchase apply even as framework agreement for future contracts for the sale and/or supply of movable items with the same suppliers, without us having to refer to them for every individual case.
- 1.3 Our General Terms and Conditions of Purchase shall apply exclusively. The General Terms and Conditions of Business (GTB) of the suppliers, which stand in contradiction with these Terms and Conditions, shall not apply only insofar as we agree to them in writing.
- 1.4 Only those orders which have been placed in writing are binding. This also applies to any future supplement or amendment. Likewise, legally-relevant declarations and notifications made by the suppliers to us after the conclusion of the contract (e.g., deadlines, warnings, declarations of rescission) require the written form in order to be effective.

**2. Orders and order confirmations**

- 2.1 Orders and acceptances, such as any modification or supplement, require the written form. Oral agreements after the conclusion of the contract are valid only if BW agrees with them in writing.
- 2.1 Our orders are to be confirmed, at the latest, within 7 working days after receiving written notification or, notably, to be fully completed by sending the ordered goods. Upon expiry of that period, we shall be entitled to revoke our order free of charge.

**3. Delivery deadline and delivery**

- 3.1 The dates and deadlines agreed are binding. The decisive indicator for determining adherence to the delivery deadline is the receipt of the goods by the delivery address we have named in our order. Unless otherwise agreed, the delivery is carried out "Ex Works". The destination is also the place of performance (obligation). Unless otherwise agreed, transport costs including packaging and any supplementary costs arising from the need to meet the delivery deadline, as well as any additional expenses shall be borne by the Supplier.
- 3.2 We are co-insurers.
- 3.3 As far as the goods are not to be received ex works by the receiving station (DDP according to INTERCOMS 2010), the Supplier shall make the goods available in good time, taking into consideration the time usually necessary for loading and shipment.
- 3.4 In case of any delays in delivery, the Supplier shall inform us by phone or in writing, including a statement of reasons. Should the latest date on which delivery is to occur, based on the contract, pass without delivery, then the Supplier falls into delivery default without the need for a reminder or complaint to be issued on our part. In case of default in delivery, our rights will be established according to legal provisions, including the right to withdraw and the claim to indemnification in lieu of the service, following the fruitless expiry of an appropriate subsequent term. The rules in paragraph 3.5 remain unaffected.
- 3.5 If the Supplier falls behind schedule, we are entitled to demand a flat rate compensation for our damages caused by default to the amount of 1% of the net price per working week but, however, not more than 5%. We shall reserve the right to proof if we incurred a higher damage. The Supplier retains the right to prove that we did not suffer any damage whatsoever or only significantly less damage.
- 3.6 The unqualified acceptance of a delayed delivery or service does imply a renunciation of the rights for the delayed delivery or service we are entitled to; this shall apply until the full payment of amounts owed by us. We reserve the right to demand an agreed contractual penalty due to non-performance (§ 341 BGB – German Civil Code) until final payment.
- 3.7 The delivery of goods must occur only in our goods receipt times. These are as follows: Mon to Fri from 7:30 am to 11:45 am and from 1:00 pm to 3:30 pm. Deliveries outside of these times will be rejected. In case of larger shipments, delivery must be notified.
- 3.8 Boxes, crates, cardboard boxes and packages must contain a delivery note with data relating to the order. Construction and machine parts must be provided clearly readable with the drawing number. Only environmentally-friendly packaging materials shall be used which do not require any special disposal. Otherwise, the Supplier shall be charged for waste disposal costs.

#### **4. Service, transfer of risk, acceptance, property rights**

- 4.1 Without our prior consent, the Supplier is not entitled to have third parties carry out the service for which it is responsible (e.g., sub-contractor).
- 4.2 Irrespective of the agreed-upon pricing terms, the risk transfers to us in case of delivery without set-up or assembly on receipt of the delivery address given by us and in cases of delivery with set-up or assembly with successful completion of our acceptance. The start-up or use of the same shall not replace our declaration of acceptance.
- 4.3 The delivered goods are transferred to our ownership at the point in time of delivery. The Supplier can reserve the right to retain title to the delivered product until payment. Furthermore, any extended or enlarged right of retention is ruled out.

#### **5. Prices, payment terms and invoices**

- 5.1 The prices named in the given price list are binding. Unless otherwise agreed, the price includes all of the Supplier's services and ancillary services (e.g., assembly, installation) and all additional expenses (e.g., proper packaging, transport costs).
- 5.2 Invoices should be submitted after dispatch of the goods with reference to our order number to the BW accounting department; invoices must not be enclosed with the shipments.
- 5.3 Unless otherwise agreed with our purchasing department, payment made within 14 days shall have a 3% discount, 30 days 2% discount or 60 days net after the receipt of the invoice, goods or provision of services. The payment period for goods delivered and invoiced prior to the agreed delivery date does not start until that time agreed in the contract.
- 5.4 We do not owe any interest rate. The Purchaser's entitlement for payment of default interest shall not be affected.
- 5.5 Payments shall not signify acknowledgement of the delivery or service in accordance with the contract. All payments are done with the proviso that they are subjected to assertion of warranty and liability claims.
- 5.6 In case of faulty and/or incomplete delivery or service, we are entitled, to a reasonable extent, to retain payments up to the complete fulfilment of the contract and order.
- 5.7 The Supplier's transfer of claims, made against us, to third parties is excluded.
- 5.8 The Supplier shall have the right of set-off and/or the right of retention only for counter-claims which are uncontested or which have been determined as effective in law.

#### **6. Acceptance and warranty claims**

Goods are accepted under the reservation of an inspection with respect to being free of defects. We shall immediately notify the defects in delivery, as soon as they are ascertained by us under the circumstances prevailing in the due course of business. Our duty of inspection shall be limited to defects which become apparent upon visual check during our incoming goods inspection, including the delivery documents as well as during our quality control using sampling (e.g., transport damages, wrong or short deliveries).

As far as acceptance is agreed, no examination is required. For the rest, it depends to what extent an inspection taking into account the circumstances of the individual case is feasible according to the proper course of business. The obligation to give notice of defects discovered at a later point in time remains unaffected. In all cases, our objection (notification of defects) shall be deemed timely and without delay if it is received by the Purchaser within 10 working days.

#### **7. Warranty on material and legal defects**

- 7.1 The Supplier warrants that the items supplied or the services offered are state of the art, comply with the relevant national and international legal provisions, as well as the regulations and guidelines issued by public authorities, employers' liability insurance associations and professional associations. A material defect shall be deemed to exist if our technical conditions of implementation for the delivery of machines and machinery are not met.
- 7.2 The statutory provisions shall be applied for material and legal defects. Irrespective of the nature of the contract with the Supplier, we have the option as to the type of supplementary performance. In the case of any errors occurring in development or construction, we are entitled to assert the rights provided in paragraphs 7.5 and 7.6.
- 7.3 If the Supplier proceeds corresponding to our plans, drawings or other specifications, the conformity of the delivery service with the specifications is deemed expressly assured. If the delivery or the service differ from the standards, we are entitled to assert the rights provided in paragraphs 7.5 and 7.6.
- 7.4 Remediation of defective shipments or services requires our consent. For the period in which the goods are not in our custody, the Supplier shall bear the risk of accidental destruction or accidental deterioration.

- 7.5 If the Supplier is in default, denies the existing defect, even in the case of urgent necessity or in case of imminent danger (in particular, when operational safety is at risk or to prevent extraordinarily larger damages), we are entitled, after having notified the contractor and after the expiration of a short period of grace, as appropriate to the situation, to remedy the defect or damages caused by it ourselves, or to have it carried out by a third party, at the cost of the Supplier. This shall also apply if the supplier is late in delivering the goods or services, and we are required, as a result of such defect, to immediately remedy the defect to avoid its own delivery default. Any costs incurred in this connection shall be borne by the Supplier.
- 7.6 As for the rest, we shall be entitled to call due for material and legal defects according to the legal provisions, and to elect to withdraw from the contract or to claim a price reduction and we may in each case demand additional compensation for damages.
- 7.7 Except where the law demands a longer limitation period than 36 months and no alternative agreement was reached, the period for the limitation of claims for shortcomings shall be thirty-six months from the point in time when risk is transferred. As far as acceptance is agreed, the limitation period shall commence with acceptance. Parts of the delivery, which were repaired within the period of warranty, are re-set to the initial period of warranty beginning with the point of time, in which the Supplier has fully completed all performance works on these parts and acknowledged its obligation to rectify the defect.
- 7.8 If we are also entitled to extra-contractual compensation due to a defect, the legally required regular statute of limitation (§§ 195, 199 BGB) shall apply even if the application of the statute of limitation periods of commercial law result in a longer statute of limitation in individual cases.
- 7.9 Should claims be made against us because of our products or services, which are to be charged to the Supplier or whose origin lies within the Supplier's organization and sphere of control, the Supplier is obliged – without us having to establish a deadline – to compensate us for all expenditures made by us arising from or in connection with the defects, and for all the damages and claims made against us. This shall also include reimbursement of travel costs arising from or in connection with the necessary recall campaign carried out. In the event of a defect in Supplier's delivery or service within six months since the time of the transfer risk of our delivery or service to our clients, it shall be deemed that the Supplier's delivery or service becomes defective within the warranty period. The limitation period against the Contractor, according to the terms we have established herein, is two months from the moment the expenses incurred; the suspension of the limitation period shall end, at the latest, after five years from the moment the Supplier's risk has passed. Any further rights and regulations shall remain unaffected.

## **8. Product liability, recall and quality assurance**

- 8.1 The Supplier shall be obliged to indemnify us from all claims concerning product liability, insofar as he is responsible for all the defects arising from liability claims. In these cases, the Supplier shall pay all costs and expenses, including the costs for a possible legal dispute or a recall campaign. Insofar as this is possible and reasonable, we shall inform the seller regarding contents and extent of product recalls and give him the opportunity to comment. Further legal claims shall remain unaffected.
- 8.2 The Supplier is liable for all damages. We do not recognize any Supplier's clauses limiting liabilities. The Supplier's duty is ruled out or limited to this extent, insofar we have limited or ruled out our liability towards our customers.
- 8.3 The Supplier shall insure himself against all insurable risks resulting from product liability, including the risk of recall. The insurance policy shall be submitted to us upon request.
- 8.4 The Supplier must carry out a quality assurance that is suitable in type and scope and corresponds to the latest state of the art of technology and provide evidence of this upon request.

## **9. Assembly works at the factory or at B+W end customers**

- 9.1 The Supplier shall be obliged to unconditional adherence and to comply with the prevention regulations and instructions regarding safety, environmental protection and fire control for external persons in their respective applicable version.
- 9.2 At the beginning of assembly works, the Supplier's employees shall, immediately after arrival, register with the people responsible within the relevant department.
- 9.3 For the execution of construction work, only devices and machineries shall be used which are in compliance with the UVV and the VDE regulations. The Supplier shall explain that it is ensured against any third-party liability damages to a sufficient level. The insurance policy shall be made available upon request.
- 9.4 The Supplier assumes full responsibility for its employees or any other third party, arising from or in connection with the execution of tasks at our plant and the non-observance of the above-mentioned obligations.
- 9.5 Welding works shall be carried out only with our permission.

#### **10. Force majeure**

If we are prevented from accepting the delivery or the service due to force majeure, in particular strikes, lock-outs, interruptions of operations for which we are not responsible, civil disturbances, official measures or other events beyond our sphere of influence, we are entitled to entirely or partially withdraw from the contract or to postpone the date of acceptance for the duration of the obstruction, insofar as our obstruction is of a significant duration and the withdrawal or the postponement of the date of acceptance serves to safeguard our interest. Any other possible claims against us shall not be entitled.

#### **11. Items, documents and confidentiality**

- 11.1 All documents, in particular diagrams, plans, drawings, calculations, instructions and product descriptions, and any data or objects that the Supplier has been provided with for the purposes of submitting an offer or executing an order, especially models, dies, moulds and tools, shall remain the property of BW and may not be used, copied or made available to third parties for any purpose other than executing the order without our express written consent. After completion of the contract, these documents, data or items shall be returned at our request. If the Supplier contravenes, it shall be responsible for the damages arising therefrom.
- 11.2 The Supplier commits to use the knowledge and experience acquired as a result of executing our orders exclusively for us and shall not make it known to third parties even after the conclusion of the contract.
- 11.3 The Supplier shall use the equipment we made available only for processing the goods ordered by us. It is also obligated to insure our tools, if it received them from us, at its own cost at replacement value. It commits to transfer us the title of all damage claims against the insurance provider; we are herewith accepting the assignment.
- 11.4 Any drawings attached to the order have fully validity. Data provided of any nature are subjected to the Supplier's complete inspection.

#### **12. Code of conduct**

Compliance with the laws of the applicable jurisdiction is a contractual obligation. The Supplier shall explicitly not, neither passively nor actively, undertake any form of bribery, infringe the fundamental rights of its employees, or use child labour. It is responsible for its employees' health and safety at work places, it must observe environmental protection regulations and shall comply with this Code of Conduct, even at its Suppliers.

#### **13. Jurisdiction and applicable law**

- 13.1 The jurisdiction – including international jurisdiction– is, for both direct and indirect disputes arising from the contractual relationship, if our contractual partner is a businessman, Reutlingen. We are, however, authorized to sue the Supplier at its general place of jurisdiction.
- 13.2 German law applies exclusively, even for deliveries abroad. The application of the Agreement of the United Nations concerning contracts for the International Sale of Goods (CISG) shall be lawfully used.

#### **14. Safeguard clause**

If individual provisions of these General Terms should be invalid, the remaining provisions shall not be affected.

BURKHARDT+WEBER Fertigungssysteme GmbH