

# GENERAL PURCHASE TERMS AND CONDITIONS

## BSE BADISCHE STAHL-ENGINEERING GmbH

The translation of the General Purchase Terms and Conditions into English is intended to provide better comprehensibility; the German version, however, is of exclusive legal substance.

The following conditions shall apply to our orders inasmuch as nothing else has been agreed. Any other conditions of the Supplier shall only apply if they have been expressly recognised by us; even if they are stated in the order acceptance, they shall not form part of the contract without expressed, written recognition. The same shall apply if we fully or partly accept the goods or make payments; execution of the order by the supplier shall be regarded – even without written confirmation – as recognition of the following conditions. These conditions shall also apply for all future transactions with the supplier.

### I. Quotations

Any quotations shall be binding and free of charge.

### II. Orders, conclusion of contract

1. Orders and other declarations shall only be binding if they are issued or confirmed by us in writing.
2. The Supplier shall confirm our order within 10 days in writing.

### III. Prices

1. The prices are fixed prices inasmuch as no price adjustment clause or a price reservation has been expressly confirmed by us. An order may only be carried out at higher price than that stated by us with our written approval.
2. Should prices for a specified day of delivery have been agreed, the price on the day of receipt of the material shall apply.
3. The prices are free ex stated unloading point Kehl am Rhein including the packaging and freight costs. If anything deviating from this has been agreed, we shall only accept the most favourable freight costs. All costs – including loading costs and cartage – arising up to transfer to the carrier shall be borne by the Supplier.  
We reserve the right to recognise additional or reduced deliveries.

### IV. Invoice and payment

1. Invoices shall not be included with the consignment but submitted after delivery for each order separately showing the VAT and stating our order number and the date of order.
2. Payment shall take place by means of payment of our choice – bills for refinancing purposes (cheque/bill of exchange) are also permitted – within 14 days at 3% discount or within 30 days net. In the case of payment by bills receivable or promissory notes, we shall bear the discount at the conditions achievable on the day of deposit of the bill.
3. Payment periods shall always commence on the day of receipt of the invoice by us but, however, not before the goods have been received by us or the services provided.
4. We reject any payment regulation by way of cash on delivery.
5. Our payments always take place with reservation of correction if complaints should subsequently arise. In the case of an error subject to warranty, we shall be entitled to refuse payment up to proper elimination of the defect.

### V. Assignment, set-off

1. The Supplier is not entitled, without our previous written approval, which may not be unreasonably refused, to assign his claims against us or have them collected by a third party. In the case of extended reservation of title, our approval shall be regarded as having been granted inasmuch as set-off against counterclaims is permissible after notification of assignment.  
If the Supplier assigns his claim against us to a third party without our approval, contrary to sentence, assignment shall nevertheless be effective. We can, however, pay in accordance with choice and with the effect of discharge of debt to the Supplier or the third party.

2. The Supplier is only entitled to set-off against claims recognised by us or those which are legally effective or to assert a right of retention due to such claims.

#### **VI. Object of delivery**

1. Only our order is decisive for the content, type and scope of the delivery and service. We are entitled to request modifications to the type of execution at any time in the same way as corrections to obvious typographical or arithmetical errors or other errors.
2. The drawings, descriptions, data which form part of the order in any form etc. are binding for the Supplier. However, he shall check them for any irregularities and draw out attention in writing to any errors discovered or assumed without delay. The Supplier shall be solely responsible for drawings, plans and calculations even if these have been approved by us
3. Should we have drawn the attention of the Supplier to (works) norms, these norms shall be the basis of the order. Inasmuch as no norms or further-reaching requirements have been determined in the order, the Supplier shall always give his assurance that the objects of delivery are of a quality customary in trade and, inasmuch as DIN, VDE, VDI, BGV (UVV) or norms equal to these exist, are delivered in agreement with these regulations. The objects of delivery shall be manufactured and equipped in such a manner that they suffice the regulations contained in the German Device and Product Safety Act applicable on the day of delivery and the safety provisions, in particular the accident prevention regulations, and correspond to occupational, medical and hygiene research.
4. For complete fulfilment of contract, the object of delivery shall include (as a significant part) detailed documentation in accordance with the CE standard. If the country of origin of the object of delivery is not Germany, a certificate of origin is necessary.
5. Inasmuch as determination of weight is necessary, the weights on receipt determined by us on our works scales shall apply. If weighing is not possible on our premises, the net weights determined by the railways and verified on the consignment note shall apply, in the case of delivery by lorry, those determined by public scales or in the case of delivery by ship, by means of the full and empty calibration at the port of discharge. If weighing in accordance with the type of the object of delivery is not possible, the Supplier shall verify the weight.

#### **VII. Provision, production means**

1. The objects provided by us shall be handled and processed or used as intended in our order and shall remain – even at the handling and processing stage – our property. If processed with other items which do not belong to us, we shall be due co-ownership in the newly produced items in the ratio in which the value of our order relates to the total of all the items used in the production including the supplier's expense for their processing. In this respect, the Supplier shall also keep the items for us. The same shall apply if through mixing or commingling our property should be lost.  
We shall be informed without delay about any legal or actual impairment of items which have been provided.
2. The Supplier is liable for the loss of or damage to items which have been provided. In the case of accidental loss or accidental damage to items which have been provided, he shall have no claim to any compensation for his expense for the handling or processing of these items.
3. Production means such as models, samples, tools, calibres, apparatus, drawings, data and similar which have been made available to the Supplier by us or have been produced in accordance with our instructions by the Supplier for himself or for third parties, may neither be sold, pawned or otherwise passed on nor in any manner used or copied for third parties. The same shall apply for the objects produced with the aid of these production means; they may only be delivered to us unless we declare that we are in agreement with other use. After the order has been completed, the production means shall be surrendered to us in proper condition without delay or the necessity for special request.
4. Tools, moulds, apparatus, films, blocks, drawings, engravings, models, samples data in any form etc. provided or ordered by us shall remain our property or shall be transferred on acquisition or production to our ownership: handover shall be replaced by the fact that the Supplier keeps the objects for us. The objects shall be identified as our property, comprehensively cared for and repaired and adequately insured. Section 690 BGB shall not be applied here. With ownership, we shall have the right to transfer the objects to third parties. This shall apply in particular if production difficulties arise for the Supplier. Should we request the Supplier to surrender the objects, he shall

meet our demand without any right of retention without delay. Irrespective of this, we are prepared to leave the objects in the possession of the Supplier as long as the deliveries are carried out by him in accordance with the order, in particular in good time and at competitive prices.

5. If the Supplier violates the regulations emanating from sub-sections 3 and 4, we shall be entitled, irrespective of further rights, to withdraw fully or partly from the contract or demand damages in lieu of performance or compensation for unavailing expenditure.

#### **VIII. Withdrawal**

1. We are entitled to withdraw fully or partly from the contract without compensation if the credit worthiness or the ability to deliver of the Supplier deteriorates to such a degree that fulfilment of the contract is, in our opinion, endangered, the supplier halts his payments, insolvency proceedings are commenced for his assets or the commencement of insolvency proceedings is rejected for the lack of funds.
2. If, as a result of circumstances, for which we are not responsible – in particular through force majeure – the fulfilment of our contract obligations becomes impossible or significantly more difficult, we can cancel the contract either fully or partly or demand execution at a later date without the Supplier being due any claims for this.

#### **IX. Date of delivery**

1. Dates of delivery or delivery periods agreed are binding. Delivery periods shall commence on the day of order.
2. The day on which the ordered object and the shipping papers have arrived at the place of receipt designated by us or the service has been provided there shall be regarded as the day of delivery.
3. If it can be recognised that the date of delivery or the period of delivery may be exceeded, the Supplier shall inform us without delay about the reason and the probable duration. The fact that the date of delivery or the delivery period are exceeded shall trigger the statutory consequences of default unless it can be proven that this can be put down to force majeure or non-culpable labour unrest. In this case, the Supplier is obliged in particular to compensate the default damage. Acceptance of delayed deliveries does not mean a waiver of claims for damages against the Supplier
4. If the date of delivery or the delivery period is exceeded, we are entitled, after setting a reasonable period, to withdraw from the contract. Alongside withdrawal, we are entitled to demand damages in lieu of performance or compensation for unavailing expenditure unless the supplier is not responsible for the date of delivery being exceeded.

#### **X. Packaging, shipping, acceptance**

1. Inasmuch as it is necessary or customary to package the object of delivery, the Supplier shall provide adequate packaging at his own expense.
2. Packaging material shall only be paid by us alongside the agreed price for the delivery if remuneration for it was expressly agreed. We reserve the right to return valuable packaging material used for shipping to the address of the Supplier with reversal of the full hire costs or the packaging value
3. Shipping shall take place to the place of receipt designated by us. Deliveries, for which we are required to bear the freight costs, either fully or partly, shall be conveyed in the cheapest manner for us and with the most favourable type of freight.
4. For deliveries with assembly or set-up at the place of delivery agreed by us, the risk shall be transferred on final acceptance, for other deliveries on arrival of the object of delivery at the designated place of receipt to us. Up until then the delivery and shipping shall take place at the risk of the supplier unless we are in the default of acceptance.
5. Any costs for transport or breakage insurance shall only be accepted by us after previous written agreement.
6. Notices of shipping shall be submitted immediately on the departure of each individual delivery. Each consignment shall include a delivery note. Our order and item numbers shall be stated on the shipping papers
7. If, on receipt of the object of delivery we are not in the possession of correct shipping papers or if our order and item numbers are not correctly stated on the shipping papers, all additional costs caused by this shall be borne by the Supplier; in such cases, we are also entitled to refuse acceptance of the delivery at the expense of the Supplier

8. We can also refuse acceptance of the object of delivery if an event of force majeure or any other circumstances outside our control, including labour unrest, makes acceptance for us impossible or unreasonable. In such cases the Supplier shall store the object of delivery.
9. In the cases of sub-sections 7 and 8, we shall not come into default of acceptance
10. If faulty goods or deliveries not accepted by us are returned, the return transport shall take place at the risk and expense of the Supplier.

#### **XI. Warranty**

1. The warranty obligations of the Supplier shall be aligned to the statutory regulations inasmuch as in the following nothing else is stated. We are entitled, according to choice, to demand elimination of the defect or delivery of an item without defect. In urgent cases, we are entitled, without further ado, to carry out elimination of defects at the expense of the Supplier through a third party or to procure replacement elsewhere.
2. The replacement delivery shall take place free of freight and packaging. Return consignments of unusable goods shall also take place free of freight and packaging for us. All costs arising from the elimination of defects shall be borne by the Supplier.
3. The warranty period shall last, if nothing else has been agreed, 2 years. It shall commence after deployment of the object and last, however, at the longest, 3 years after acceptance. A new 2-year period shall commence for replacement deliveries.
4. Defects, which become apparent only on processing or on commencement of use of the goods delivered, may be the subject of complaint by us without delay after being discovered. In this case, the Supplier shall waive any objection of delayed complaint concerning defects. Any payments made by us do not mean the acceptance of the goods without reservation or the acceptance of work performance without reservation
5. If, as a result of a defective delivery, a complete check exceeding the customary measure of receipt control is necessary, the Supplier shall bear the costs for this. In urgent cases, we are entitled to eliminate the defects discovered ourselves at the expense of the Supplier.

#### **XII. Production checks, technical acceptance**

1. We reserve the right, during production and before delivery, to check the quality of the material used, the exactitude of the measure and the quantities, and the quality otherwise of the produced parts as well as adherence to the other regulations of the order in the works of the Supplier and his own suppliers.
2. If we have reserved technical acceptance of the object of delivery in the works of the Supplier through us or a third party engaged by us, we or the engaged third party shall be notified of the readiness for acceptance in good time at a reasonable period in writing. The acceptance costs incurred at the Suppliers shall be borne by him.
3. The production checks and/or technical acceptance do not release the Supplier from his performance and warranty obligations.

#### **XIII. Product liability**

1. If damage is caused by an error in the product of the Supplier, he is obliged to indemnify us against any claims for damages by third parties on first demand.
2. Within this framework, the Supplier is also obliged to refund any expenses which arise from or in connection with any product recall carried out by us.
3. The Supplier undertakes to maintain a product liability insurance with cover of a lump-sum of EUR 5 million per person injury/material damage; if we are due further-reaching claims for damages, these are unaffected.

#### **XIV. Protective rights**

The Supplier is responsible for the fact that, through delivery and use of the goods ordered, no patents or protective rights of third persons are violated. He shall indemnify us against any avilment by the holders of protective rights on first request in full scope and is obliged to give us every support in warding off the claims of third parties and to assume the costs for this. This shall also apply for deliveries by third parties to the Supplier which he passes on to us.

**XV. Data protection**

In accordance with the BDSG<sup>1</sup>, we are entitled to save, transmit, modify and delete the personal data of the Supplier for fulfilment of our business purposes and goals. The Supplier is hereby notified of the initial storage of his personal data.

**XVI. General regulations**

1. The above conditions shall apply, even if this is not expressly agreed in the individual case, equally for deliveries and services.
2. The Supplier shall observe all safety rules in our works.
3. Before commencing the works, he shall conclude and maintain a liability insurance with cover of at least EUR 5 million.
4. The law of the Federal Republic of Germany shall apply to all legal relationships from or in connection with our quotations.
5. The place of performance and – inasmuch as the Supplier is a businessman – the place of jurisdiction is 77694 Kehl am Rhein. We are also entitled to take action against the Supplier at his general place of jurisdiction.
6. If individual provisions of these conditions or the delivery contract are or become ineffective, the applicability of the other provisions is not affected. The ineffective provisions shall be rephrased in such a manner that the legal and economic purpose intended with them is achieved. The same shall apply if, in carrying out the contract, a gap requiring to be filled becomes apparent. The contract parties undertake to supplement the ineffective provisions with legally effective agreements or to close the gap in the contract.

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<sup>1</sup> German Federal Data Protection Act