

Purchase Order Terms and Conditions - Revision: 2.0_25.10.2019

1. APPLICATION

1.1 The following purchasing conditions ("Terms") apply to any and all purchase orders of goods and services ("Orders") by Brucha GmbH ("Purchaser"), including follow-up orders within existing business relationships, and shall be accepted by the contractual party ("Supplier") by the time of delivery of any goods and/or services.

1.2 Any terms and conditions different from these Terms – including the Supplier's general terms and conditions – will only become an integral part of the contract if this has expressly been agreed to in writing.

Consequently general terms and condition do not become a part of the contract because they have been enclosed to quotations, orders, declarations of acceptance or similar documents without the Purchaser's expressed written agreement.

1.3 The acceptance or payment of delivery of goods and/or services does not imply an approval of the Supplier's general terms and conditions, even if the Purchaser had knowledge of differing or opposed terms.

1.4 If the Supplier does not agree with these Terms, they are to state so explicitly in separate writing. In that case the Purchaser shall have the right to withdraw the Order without any liability toward the Supplier.

2. QUOTATION/CONCLUSION OF CONTRACT

2.1 Quotations, negotiations and cost estimates are free of charge for the Purchaser, independent of the cost incurred by the Supplier. Differing arrangements must be agreed to in writing by the Purchaser.

2.2 The Supplier is bound to their offer for at least 12 weeks, unless another limitation has been agreed upon beforehand.

2.3 Orders and Order Confirmations are only considered legally binding in written form. Orders sent via email shall be considered orders in writing.

2.4 The Supplier agrees to confirming purchasing orders immediately, but at the latest within 7 working days in writing.

2.5 Order Confirmations that the Supplier has changed and/or added to are void unless the changes and/or additions have in advance been confirmed in writing by the Purchaser. To be legally binding any and all changes and/or additions shall be explicitly labelled and explained.

3. CONFIDENTIALITY AGREEMENT

3.1 Documents (such as plans and similar files) that are provided to the Supplier in support of preliminary work required for quotations and/or fulfilment of the Order remain in the Purchaser's sole property and possession and may only be made accessible to third parties with the Purchaser's prior express written approval.

3.2 The Supplier hereby irrevocably commits to maintaining complete secrecy regarding any business or industrial secrets becoming known to them, and no information may be disclosed to third parties in any form or way without the Purchaser's express written approval.

This confidentiality agreement shall also endure indefinitely after termination of contract.

4. SCOPE OF DELIVERY/RIGHT TO WITHDRAW

4.1 The Supplier is obliged to immediately inform the Purchaser if circumstances arise or become recognisable that may lead to failure to duly fulfil the contract.

In this event the Purchaser shall be entitled to rescind the contract immediately and may demand damages for non-performance. The Supplier especially bears liability for damages incurred through any cover transactions.

5. DELIVERY CONDITIONS

5.1 The delivery date specified in the Order Confirmation is binding. The Supplier shall be responsible for meeting the scheduled delivery time regardless of circumstances.

5.2 The delivery date shall be considered to have been met, if the goods have been delivered or the services have been executed at the specified place of delivery by 4:00 p.m. of the confirmed day.

5.3 The Supplier is obliged to immediately inform the Purchaser if circumstances arise or become recognisable that may lead to failure to comply with the delivery date.

In this event the Supplier is not entitled to rescind the contract or increase prices. This also applies in the case of force majeure.

Consequently all additional costs incurred to ensure delivery according to the contract, including expenses for accelerated transport, are to be borne by the Supplier.

5.4 If the Supplier does not render performance within the agreed delivery date, or is in default, the Purchaser is entitled to rescind the contract upon fruitless expiry of an appropriate deadline and may demand damages for non-performance.

- 5.5** In case of a delay the Purchaser is entitled, without the need to provide proof of resulting damage and in addition to further statutory claims, to demand payment of a penalty equal to 1 % of the total order value for each commenced calendar week of delay, but altogether a maximum penalty 7.5 % of the total order value of the delayed goods and/or services.

The Purchaser reserves the right to assert claims for damages exceeding the contractual penalty.

- 5.6** Deliveries shall be subject to the condition „DDP (Delivered Duty Paid) A-3451 Michelhausen, Rusterstraße 33, Incoterms 2020“, including packaging and other ancillary services.

Differing delivery conditions are only legally binding if agreed upon expressly in writing by the Purchaser for one specific delivery.

The Supplier is obligated to comply with the Purchaser's specifications regarding mode of transportation, choice of haulier and all other forwarding instructions and requirements.

6. TRANSFER OF RISK

- 6.1** For deliveries not involving installation or commissioning the transfer of risk occurs upon receipt at the Purchaser's place of receipt at the company site located in A-3451 Michelhausen, Rusterstraße 33.

- 6.2** For deliveries involving installation and/or commissioning the transfer of risk occurs upon proper acceptance by the Purchaser. A delivery shall only be considered properly accepted if recognised by written declaration and signed by the Purchaser.

7. PRICE/PAYMENT

- 7.1** All prices are fixed prices and shall be considered binding. Differing arrangements must be agreed to in writing beforehand.

- 7.2** The agreed price includes any and all of the Supplier's services, ancillary services and additional expenses. Differing arrangements must be agreed to in writing beforehand.

- 7.3** All prices include the legal rate of value added tax unless identified separately.

- 7.4** The Purchaser shall only be obliged to make a down payment if agreed upon in writing beforehand and if the Supplier lodges a bank guarantee equal to the amount of the down payment provided by a bank established in the European Union (or within the European Economic Area).

- 7.5** Unless otherwise agreed upon, payments shall be made at the Purchaser's discretion either within 30 days less 3 % discount from the net amount or within 60 days without any deductions.

The payment term begins only when delivery has been completed (cf. 6.1) or when delivery has been completed and properly accepted (cf. 6.2) and a valid invoice has been received by the Purchaser (cf. 7.9).

- 7.6** Payments are deemed to have been made upon submission of the transfer order to the Purchaser's bank. Fees charged by the recipient's bank are to be borne by the Supplier.

- 7.7** The Purchaser is entitled to withhold any due payments as long as they still hold claims arising from incomplete or defective deliveries or services against the Supplier. Payments made by the Purchaser do not constitute confirmation that the delivery was completed and/or without defects.

- 7.8** The Purchaser is entitled to withhold a security deposit amounting to 10 % of the gross amount invoiced. The amount withheld shall be released to the Supplier without interest within 14 days upon expiry of the warranty period.

If agreed upon in writing the Supplier may redeem the security deposit by means of a bank guarantee of the same amount provided by a bank established in the European Union (or within the European Economic Area).

- 7.9** The Supplier is obliged to draw up a separate invoice for each Order. All issued invoices must comply with Austrian statutory provisions, especially the Value Added Tax Act.

The Purchaser reserves the right to return invoices that do not comply with these regulations to the Supplier without further action. In accordance with clause 7.5 this does not constitute the receipt of a valid invoice, therefore the payment term does not begin.

- 7.10** A reservation of title in favour of the Supplier is only legally binding if agreed upon in writing by the Purchaser.

8. WARRANTY/GUARANTEE

- 8.1** The Supplier warrants that the goods and/or services delivered shall be free from defects and in accordance with the requirements of the Order. The performance of goods and/or services shall conform to the Order and survive inspection and approval.

- 8.2** Delivered goods and/or services shall comply with all statutory and legal requirements applicable to the end user. If no end user is specified, the delivery shall comply with Austrian standards of safety and quality and the requirements specified by the Purchaser. In cases of doubt concerning the requirements the Supplier shall consult the Purchaser.

- 8.3** The Supplier warrants the goods and/or services rendered contain only appropriate, state of the art materials of the highest quality.

The Supplier shall also warrant the delivery completely match the samples, patterns and descriptions supplied to the Purchaser as well as the Purchaser's specifications.

8.4 The quantities, measurements and weights determined by the Purchaser during the receiving inspection shall be decisive.

8.5 The provisions of § 377 of the Unternehmensgesetzbuch (UGB) shall not apply.

The Purchaser shall immediately report any defects if and when they are discovered in the due course of business. This shall hold true during the continued use of supplied goods and/or services.

A notice of defects shall be deemed to have been given immediately if it occurs within 14 days after discovery of the defects.

8.6 In the event of breach of warranty the Purchaser reserves the right to determine the actions to be taken by the Supplier (correction, exchange, price reduction).

8.7 The Purchaser may require the Supplier to repair or replace the defective goods and/or services free of charge at the place of delivery or at the location of the Purchaser's end customer. Any additional costs shall be borne exclusively by the Supplier.

8.8 In the event of defects or incomplete deliveries reported by the Purchaser (cf. 8.4), the Supplier shall propose suitable corrective actions that are satisfactory to both the Purchaser and their possible end customer within 5 working days.

If the Supplier fails to comply with this obligation, the Purchaser reserves the right to undertake necessary corrective actions or to commission a third party to undertake necessary corrective actions at the expense of the Supplier.

8.9 As a rule the warranty period shall be three years from the delivery date, that is the date of proper acceptance of goods and/or services by the Purchaser (cf. 6.2), but at least two years from delivery to the Purchaser's end customer.

In the event of a specified, justifiable notice of defects (cf. 8.5) the warranty period shall be suspended for a minimum of six months and until corrective actions have been taken.

8.10 The warranty period for goods and/or services shall begin anew each time any parts of a delivery are replaced as a result of a warranty claim or a claim for damages.

8.11 In the event that an end customer reports any defects related to goods and/or services delivered by the Supplier, the Supplier shall immediately take suitable corrective actions.

Should it be determined in retrospect that the defects were caused by the end customer, the Purchaser shall diligently support the Supplier in asserting their claims against the end customer.

8.12 The Supplier shall fully indemnify and keep indemnified the Purchaser from any and all liabilities, demands, claims, costs and damages, regardless of their legal grounds, arising from any loss, damage or injury caused by the Supplier.

This shall apply without limitation to any product liability claims resulting from defects due to goods and/or services delivered by the Supplier, regardless of who is considered to be the manufacturer of the end product according to product liability law.

The Supplier shall bear the burden of proof in that respect.

8.13 Upon the Purchaser's request, the Supplier shall immediately provide evidence of product liability insurance covering up to 3 million euro per insured event.

9. SECONDARY OBLIGATIONS

9.1 The Supplier shall provide the Purchaser with any and all detailed construction drawings, plans and manuals free of additional charge. Manuals shall be written in the language specified by the Purchaser.

9.2 The Supplier shall guarantee to provide suitable spare parts, servicing and repair for a period of 5 years from the delivery date and to supply necessary components and services to the Purchaser.

9.3 The Supplier shall arrange for suitable training of the Purchaser's and/or the end customer's staff.

9.4 All supplied goods shall bear a nameplate conforming to the Purchaser's specifications (including the designation of the end customer in the specified language and script). All delivery documents shall specify the serial number of the unit delivered.

9.5 In the event that a flat rate for installation has been agreed upon, the amount specified shall cover any and all expenses related to the hire, travel and sojourn of qualified specialists until the proper acceptance of delivery by the Purchaser or the end customer (c.f. 6.2).

9.6 All products shall be outfitted with the mandatory safety devices and shall comply with all safety standards applicable to the location of the end customer's installation site. All units, systems and products shall be affixed with CE marking according to EU guidelines and Austrian law.

9.7 Each delivery shall be supplied with relevant declarations of conformity including summary information as well as installation instructions and/or assembly manuals in the language specified by the Purchaser if applicable.

9.8 The Supplier shall immediately report in writing any and all changes made to materials, production processes, vendor parts and/or declarations of conformity.

10. PLACE OF JURISDICTION, PERFORMANCE AND GOVERNING LAW

- 10.1 The place of jurisdiction for all disputes arising directly or indirectly out of the contract shall be the court of competent jurisdiction in St. Pölten/Niederösterreich.
- 10.2 The place of performance for deliveries and payments shall be A-3451 Michelhausen, even if delivery has occurred elsewhere as agreed.
- 10.3 Any disputes arising shall be exclusively subject to Austrian law under exclusion of all reference provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 10.4 In the event of disputes arising from the present translation of the Terms, the German text shall prevail.

11. SEVERABILITY CLAUSE

If a provision of these Terms is or becomes illegal, invalid or unenforceable, the validity and/or enforceability of any other provisions of these Terms shall not be affected.