

# Terms of Purchase of Robert Bürkle GmbH and its affiliated companies - as of 1 December 2015

## 1. General

Our Terms of Purchase shall apply to business dealings with entrepreneurs as well as legal persons and special funds under public law. They apply exclusively; we acknowledge the supplier's general terms and conditions conflicting or deviating from our Terms of Purchase only insofar as we have expressly agreed to them in writing. The acceptance of goods or services from the supplier (hereinafter: subject matter of the contract) or payment thereof does not constitute acceptance, even if the acceptance or payment is made in the knowledge of conflicting or supplementary contract terms of the supplier.

## 2. Conclusion of contract and amendments thereto

- 2.1 Orders, arrangements and delivery schedules as well as their changes and supplementations must be in writing.
- 2.2 Verbal agreements of any kind, including subsequent changes and supplementations to our Terms of Purchase at least require a written confirmation by us in order to be valid.
- 2.3 Quotations are binding and shall not be reimbursed, unless expressly agreed otherwise.
- 2.4 We are entitled to revoke the order if the supplier does not accept it within two weeks of receipt.
- 2.5 Delivery schedules within the framework of order and call-off planning become binding unless the supplier objects within two working days after receipt.

## 3. Delivery

- 3.1 Deviations from our arrangements and orders are only permitted after our prior approval. The approval must be in writing.
- 3.2 Agreed dates and deadlines are binding. The receipt of the goods by us is decisive for the observance of the delivery date or the delivery time. If delivery "ex works" (DAP (Delivered At Place) or DDP (Delivery Duty Paid) according to Incoterms 2010) has not been agreed, the supplier shall deliver the goods in good time, taking into account the time to be agreed with the freight forwarder for loading and dispatch.
- 3.3 If the supplier has taken over the installation or assembly and nothing else has been agreed, the supplier shall bear all necessary ancillary costs, such as travel expenses, provision of the tool and releases, subject to deviating regulations.
- 3.4 If the supplier is in default, we are entitled - in addition to further statutory claims - to a flat-rate replacement of damage caused to us by delay amounting to 0.5% of the net price of the delayed delivery per completed calendar week, but not more than 5% of the net price of the delayed delivery. We reserve the right to prove that we have incurred higher damage. The supplier reserves the right to prove that none or only a minor damage has occurred to us.
- 3.5 The unconditional acceptance of the delayed delivery or service does not constitute a waiver of our claims for compensation for the delayed delivery or service; this is valid until full payment of the fee owed by us for the concerned delivery or service.
- 3.6 Partial deliveries are, in principle, not allowed, unless we have expressly agreed to them or they are reasonable for us.
- 3.7 The values determined by us during the incoming goods inspection are decisive for quantities, weights and dimensions, unless otherwise proven.
- 3.8 Unless stipulated otherwise, we receive single, temporally and regionally unlimited rights of using software, which is part of the delivered item. The permitted use by us includes, in particular, the duplication, loading and running of software. Furthermore, the sub-licensing, leasing or any other form of transfer of software to our affiliated companies within the meaning of Section 15 AktG (Companies Act) and purchase of the delivered item that includes the software are covered. We also have the right to use the agreed features of such software, including documentation, to the extent necessary for the contractual use of the product. We may also make an appropriate number of backup copies without express agreement.

## 4. Force majeure

- 4.1 Force majeure, operational disruptions for which we are not responsible, unrest, official measures and other unavoidable events release us from the obligation of timely acceptance for the duration of such events. During such events, as well as for two weeks after they end, we shall be entitled - without prejudice to our other rights - to rescind the contract in whole

or in part, unless these events are of material duration and our requirements are significantly reduced as a result of the required alternative procurement.

- 4.2 The regulations of paragraph 4.1 also apply to industrial disputes.

## 5. Dispatch notification and invoice

The specifications in our orders and delivery schedules apply.

## 6. Pricing and transfer of risk

Unless agreed otherwise, prices are DAP (Delivered At Place) according to Incoterms 2010, including packaging. VAT is not included therein. The supplier shall bear the material risk until acceptance of the goods by us or our agent at the place, to which the goods are to be delivered according to the order.

## 7. Terms of payment

Unless a special agreement has been made, the invoice shall be settled either within 14 days with a deduction of 3% discount or within 30 days without any deduction from the due date of the claim for payment and receipt of both the invoice and the goods or provision of the service. Payment is subject to invoice verification.

## 8. Claims for defects and recourse

- 8.1 Subject to a deviating agreement, the goods will only be inspected by us for obvious damage, in particular transport damage, accuracy and completeness, upon receipt of the goods as far as and as soon as this is feasible in the ordinary course of business. We will report any defects immediately upon discovery. In this respect, the supplier waives the objection of the delayed notice of defects.
- 8.2 The statutory provisions on defects of quality and title shall apply, unless specified otherwise below.
- 8.3 In general, we reserve the right to choose the type of supplementary performance. The supplier may refuse the type of supplementary performance chosen by us if it is only possible with disproportionate costs.
- 8.4 If the supplier does not immediately start remedying the defect after our request for the same, then we are entitled in urgent cases to do it ourselves or have it done by third parties at the expense of the supplier, in particular, to avert serious risks or major damage.
- 8.5 In the case of defects of title, the supplier shall also indemnify us from any claims of third parties, unless he is not responsible for the defect of title.
- 8.6 Claims for defects expire with a limitation period of 3 years - except in cases of fraud - unless the item has been used in accordance with its customary use for a building and has caused its defectiveness. The period of limitation begins with the delivery of the subject matter of the contract (transfer of risk).
- 8.7 If the supplier fulfils his obligation to supplementary performance through replacement delivery, the period of limitation for the goods delivered as replacement restarts after the delivery, unless the supplier has expressly and correctly reserved during the subsequent performance to make the replacement delivery only as a matter of goodwill in order to avoid disputes or in the interest of continuing the supply relationship.
- 8.8 Any costs incurred by us as a result of the defective delivery of the subject matter of the contract, in particular, transport, travel, labour, installation, removal, material costs or costs for an incoming goods inspection exceeding the usual scope shall be borne by the supplier.

## 9. Product liability

- 9.1 In the event that claims are asserted against us due to product liability, the supplier is obliged to exempt us from such claims, if and insofar as the damage was caused by a defect of the subject matter of the contract delivered by the supplier. However, in cases of culpable liability, this only applies if the supplier is at fault. If the supplier is responsible for the cause of damage, he must prove that he is not at fault.
- 9.2 In the cases of para. 9.1, all costs and expenses, including the costs of any legal action shall be borne by the supplier.
- 9.3 Moreover, the statutory provisions apply.
- 9.4 Before a recall that is wholly or partially due to a defect in the subject matter of the contract delivered by the supplier, we will inform the supplier, give him the opportunity to cooperate and communicate with him about an efficient implementation, unless the information or participation of the supplier is not possible due to urgency. Insofar as a recall is due to a defect in the subject matter of the contract delivered by the supplier, the supplier bears the costs of the recall.

## 10. Withdrawal and termination rights

- 10.1 In addition to the statutory rights of withdrawal, we are entitled to terminate or withdraw from the contract with immediate effect if:
- the supplier has stopped supplying his customers,
  - significant deterioration of the financial circumstances of the supplier occurs or threatens to occur and thereby the fulfilment of the obligation to supply us is at risk,
  - the statement of facts of insolvency or over-indebtedness occurs with the supplier or
  - the supplier stops his payments.
- 10.2 We are also entitled to terminate or withdraw from the contract if the supplier's assets are subjected to an application for opening insolvency proceedings or a comparable debt settlement procedure or if such an application is rejected for lack of assets.
- 10.3 If the supplier has provided a partial performance, then we are only entitled to withdraw from the entire contract if we are not interested in the partial performance.
- 10.4 Insofar as we terminate or withdraw from the contract on the basis of the above contractual rights of withdrawal or termination, the supplier must compensate us for any incurred damage, unless he is not responsible for the occurrence of the right of withdrawal or termination.
- 10.5 Statutory rights and claims are not limited by the provisions contained in this para. 10.

## 11. Documents and confidentiality

- 11.1 All business or technical information made available by us (including features, which can be obtained from, for example, any transferred objects, documents or software, and any other knowledge or experience) must be kept secret towards third parties, unless and until it is proven public knowledge, and may only be made available to such persons in the supplier's own company, who must necessarily be consulted for the use of such information for the purpose of delivery to us and are also obliged to maintain secrecy; such information remains our exclusive property. Without our prior written consent, such information may not be reproduced or used commercially, except for deliveries to us. At our request, all information provided by us (including any copies or records made) and items lent on loan shall be immediately returned to us in whole or destroyed completely. We reserve all rights to such information (including copyrights and the right to register industrial property rights such as patents, utility models, semiconductor protection, etc.). Insofar as these have been made accessible to us by third parties, this legal reservation also applies in favour of these third parties.
- 11.2 Products manufactured according to documents drafted by us, such as drawings, models and the like, or according to our confidential information or with our tools or rebuilt tools, may neither be used by the supplier nor offered or delivered to third parties.

## 12. Export control and customs

- 12.1 The supplier is obliged to inform us of any approval requirements for (re-) exporting his goods in accordance with German, European, US export and customs regulations as well as the export and customs regulations of the country of origin of his goods in his business documents. To this end, the supplier must at least provide the following information in his offers, order confirmations and invoices for the relevant item of goods:
- description of the goods
  - the applicable export list number, including the Export Control Classification Number acc. to U.S. Commerce Control List (ECCN), if applicable,
  - the commercial origin of goods and the components of his goods, including technology and software,
  - the statistical item code (HS code) of the goods, as well as
  - a contact person in his company to clarify any queries from us.
- 12.2 At our request, the supplier is obligated to notify us in writing of all other foreign trade data on his goods and their components and to inform us immediately (before delivery of the concerned goods) about any changes to the above data in writing.

## 13. Compliance

- 13.1 The supplier undertakes to comply with the relevant legal regulations for dealing with employees, environmental pro-

tection and occupational health and safety and to work towards reducing adverse effects on people and the environment in his activities. To this end, the supplier will set up and develop a management system according to ISO 14001 within his capabilities. Furthermore, the supplier will observe the principles of the UN Global Compact Initiative. These mainly concern the protection of international human rights, the right to collective bargaining, the abolition of forced labour and child labour, the elimination of discrimination in recruitment and employment, environmental responsibility and the prevention of corruption. For further information on the UN Global Compact Initiative, please visit [www.unglobalcompact.org](http://www.unglobalcompact.org).

- 13.2 We reserve the right to withdraw from existing contracts or terminate them without notice if a supplier shows unlawful behaviour repeatedly and/or in spite of a notice and does not prove that the violation was remedied as far as possible and reasonable precautions were taken to avoid future violations.
- 13.3 The supplier is obligated to comply with the applicable laws governing the general minimum wage and to oblige subcontractors appointed by him to the same extent. The supplier demonstrates compliance with the above obligation on request.
- 13.4 In the event of circumstances that reasonably justify our suspicion of the violation of the above obligations set out in 13.1 - 13.3, the supplier must inform us immediately of any possible breaches and notify us of the measures to provide information.

## 14. Place of performance

Place of performance is the place, to which the goods are to be delivered or the service is to be provided according to the order.

## 15. General provisions

- 15.1 The contract is governed exclusively by German law, excluding the conflict of laws and the CISG (United Nations Convention on Contracts for the International Sale of Goods).
- 15.2 The venue for all disputes arising directly or indirectly from contractual relationships, which form the basis of these Terms of Purchase, is Freudenstadt, Federal Republic of Germany, if the supplier is a merchant, or a legal entity or a special fund under public law. We are also entitled to sue the supplier at our discretion at the court of his domicile or branch or at the court of the place of performance.