

# General Purchasing Conditions

Version: 15.05.2020

## 1. Orders and order confirmations

1.1 These general terms and conditions are subject to all orders of the buying party. General terms and conditions of the selling party, on the other hand, do not give rise to any contractual right or obligations, unless the customer explicitly accepts these. The silent reception of the seller's general terms and conditions is insufficient.

1.2 The customer is entitled to cancel the order if the supplier has not accepted it in writing within two weeks of receipt (order confirmation).

1.3 Amendments and changes to the order through the order confirmation are only contractually binding if they are confirmed by the customer.

## 2. Rights of use

2.1 The supplier grants the customer the non-exclusive, transferable, worldwide and unlimited right to,

2.1.1 use the deliveries and services including the associated documentation, integrate them into other products and sell them worldwide;

2.1.2 use or allow the usage of the software and the associated documentation (collectively referred to below as "software") in connection with the installation, commissioning, testing and operation of the software;

2.1.3 sublicense the right of use according to 2.1.2 to affiliated companies, other distributors and end customers;

2.1.4 entitle affiliated companies and other distributors to grant end-customers the rights in accordance with section 2.1.2;

2.1.5 use or copy the software in other products or to have it used and copied by affiliated companies or other distributors;

2.1.6 distribute, sell, rent, lease, or make the software available for download and to copy the software to the extent necessary for this, provided that the number of concurrent licenses used does not exceed the number of licenses acquired;

2.1.7 to sublicense the right of use to affiliated companies and other distributors in accordance with section 2.1.6.

2.2 In addition to the right granted in Section 2.1, the customer, affiliated companies and other distributors are authorized to allow end customers to transfer the software licenses.

2.3 All sublicenses granted by the customer must provide adequate protection for the intellectual property of the contractor in the software, using the same contractual provisions that the customer uses to protect his own intellectual property.

2.4 The supplier is obliged to inform the customer in time, at the latest with the order confirmation, whether his deliveries and services contain "open source software". "Open source software" refers to software that the rights holder grants to any user free of license fees with the right to edit and / or distribute on the basis of a license or other contractual regulation (e.g. GNU General Public License (GPL), GNU Lesser GPL (LGPL), BSD License, Apache License, MIT License). If the deliveries and services of the contractor contain open source software, the contractor must deliver the following to the customer at the latest when the order is confirmed:

- Source code of the open source software used, insofar as the applicable open source license conditions require the disclosure of this source code,

- List of all open source files used with a reference to the respectively applicable license and a copy of the complete license text,

- Written declaration that by the intended use of open source software neither the deliveries and services of the contractor nor the products of the customer are subject to a "copyleft effect", whereby "copyleft effect" refers to the open source license conditions that certain deliveries and services of the supplier and works derived from them only under the conditions of the open source license conditions, e.g. with disclosure of the source code, may be distributed. If the supplier only indicates after receipt of the order that his deliveries and services contain open source software, then the customer is entitled to cancel the order within 14 (fourteen) days after receipt of the notification and transmission of all information listed in the paragraph above.

## 3 Time of performance, contractual penalty in the event of performance disruption

3.1 The timeliness of deliveries or subsequent performance depends on the point of delivery specified by the customer. The timeliness of deliveries with installation or assembly as well as performance depends on the final acceptance of the customer.

3.2 If there is a noticeable delay in a delivery or service or supplementary performance, the customer must be informed immediately and his decision obtained.

3.3 If the supplier is in default, the customer is entitled to charge a contractual penalty of 0.3% (zero-point three percent), but not more than 5% (five percent) of the total contract amount for each working day of the delay. If the corresponding reservation is omitted when the deliveries, services or supplementary performance are accepted, the contractual penalty can still be enforced, if the reservation is declared until the final payment.

#### **4 Transfer of risk, shipping, place of performance, transfer of ownership**

4.1 For deliveries with installation or assembly and for services, the risk passes with acceptance. For deliveries without installation or assembly the risk is transferred upon delivery at the delivery point specified by the customer.

4.2 Unless otherwise agreed, the shipping and packaging costs are settled with the agreed remuneration. For deliveries sent from the supplier's warehouse, shipping is to be carried out at the lowest cost, unless the customer has stipulated a specific mode of transport. Additional costs due to failure to comply with the shipping instructions will be borne by the supplier. If the recipient is free of charge, the customer can also determine the mode of transport. Additional costs for any accelerated transportation necessary to meet a delivery date are to be borne by the supplier.

4.3 Each delivery must be accompanied by packing slips or delivery notes stating the content and the complete order code. The shipment must be reported immediately with the same information.

4.4 If a transport is called up by a freight forwarder commissioned by the customer, the supplier will inform the freight forwarder of the required dangerous goods data in accordance with the legal requirements.

4.5 If, subsequent to a delivery, another means of transport is used for the goods, the supplier will provide the freight forwarder with all necessary goods data required by law.

4.6 If the supplier violates his obligations under this section 4, he bears all expenses and damage that the customer may incur as a result, unless the supplier is not responsible for the breach of duty.

4.7 Ownership passes to the customer upon handover or acceptance.

#### **5. Invoices**

The order code of each individual item must be specified in the invoices. As long as this information is missing, invoices are deemed unpayable. Invoice copies are to be marked as duplicates.

#### **6. Prices, Payments**

6.1 The prices specified in the contract or in the order are fixed prices plus VAT.

6.2 Unless otherwise agreed, payments are due for payment net within 60 (sixty) days. If payment is made within 14 (fourteen) days, the customer is entitled to a 3% (three percent) discount. The payment period begins as soon as the delivery or service has been rendered in full and the properly issued invoice has been received.

6.3 If the supplier has to provide material tests, test reports, quality documents or other mandatory documents, the completeness of the delivery and performance also requires the receipt of these documents. Discount deduction is also permissible if the customer offsets or withholds payments in an appropriate amount due to defects.

6.4 Payments do not indicate that the delivered goods and services are according to contract.

#### **7. Incoming inspections**

7.1 After receipt of the deliveries, the customer will check whether they correspond to the ordered quantity and the ordered type and whether there are externally recognizable transport damages or externally recognizable defects.

7.2 If the customer discovers a defect in the aforementioned tests or later, he will report this to the supplier.

7.3 Complaints can be made within one month of delivery or service or, if the defects are only noticed during processing or use, since they were discovered.

7.4 The customer is not responsible for any other checks and notifications than the aforementioned.

#### **8. Liability for defects**

8.1 The supplier must comply with the recognized rules of technology, relevant technical regulations, the legal and official regulations applicable at the place of execution and all occupational safety and accident prevention regulations when performing the work.

8.2 If defects are found before or at the transfer of risk or occur during the limitation period specified in Sections 8.10 and 8.11, the supplier shall either remedy the defects at his own expense or redeliver or perform the defects free of defects. This also applies to deliveries where the test was limited to random samples. The choice of the customer is to be made at its reasonable discretion.

8.3 With regard to the obligation to remedy defects immediately, the supplier cannot rely on the fact that the subcontractor does not meet his performance obligation. As long as there are disputes between

the supplier and his subcontractor, the supplier has to secure evidence, if possible, to carry out appraisers so that the construction processes are not disrupted and services rendered are not impaired.

8.4 If the supplier does not carry out the supplementary performance within a reasonable period of time set by the customer, the customer is entitled to withdraw from the contract in whole or in part without compensation or to demand a reduction in price or to carry out or have the repair or new delivery carried out at the supplier's expense and to claim damages instead of performance. §281 (2) and §323 (2) BGB remain unaffected.

8.5 The rights mentioned in section 8.4 can be asserted without setting a deadline if the customer has a particular interest in immediate subsequent performance due to the avoidance of his own delay or other urgency.

8.6 The aforementioned claims become statute-barred one year after notification of the defect, but in no case before the expiry of the limitation periods specified in this Section 8.

8.7 Further or other legal claims remain unaffected.

8.8 If the supplier delivers or repairs within the scope of his obligation to remedy the defects, the periods specified in sections 8.10 and 8.11 begin again.

8.9 Irrespective of the transfer of risk, the supplier bears the costs and risks of the measures required for the purpose of subsequent performance (e.g. return costs, transport costs).

8.10 Claims for material defects become statute-barred after three years, unless the law provides for longer periods.

8.11 Claims for legal defects become statute-barred after five years, unless the law provides for longer periods.

8.12 The limitation period begins with the transfer of risk (Section 4.1). For deliveries to locations where the customer carries out orders outside of his works or workshops, it begins with the acceptance by the customer, at the latest one year after the transfer of risk.

## **9. Checking for freedom from defects of title / obligation to provide information**

The delivery of products free of defects of title is essential to the contract for the customer. The supplier is obliged to check that the delivery and service are free from defects in title and to notify the customer of any conflicting property rights. A

violation of these obligations is subject to the regular statutory limitation period.

## **10. Transfer of orders to third parties**

The transfer of orders to third parties is not permitted without the written consent of the customer and entitles the customer to withdraw from the contract in whole or in part and to claim damages.

## **11. Provisions of materials**

11.1 Provisions of materials remain the property of the customer and must be stored separately free of charge, to be designated and managed as the property of the customer. Their use is only permitted for orders of the customer. In the event of culpable loss of value, the supplier must pay compensation. The supplier is also responsible for simple negligence. This also applies to the calculated transfer of order-related material.

11.2 Processing or transformation of the material takes place according to the customer's wishes. The customer claims immediate ownership for the new or transformed product. If this is not possible for legal reasons, the customer and the supplier agree that the customer becomes the owner of the new item at any time during processing or transformation. The supplier stores the new item free of charge for the customer with the care of a prudent businessman.

## **12. Tools, forms, samples, secrecy, etc.**

12.1 Tools, forms, samples, models, profiles, drawings, standard sheets, print templates and gauges provided by the customer, as well as objects manufactured according to them, may not be passed on to third parties without the written consent of the customer nor for the purposes other than contractually agreed. They are to be secured against unauthorized inspection or use. Subject to further rights, the customer can request their surrender, if the supplier violates these obligations.

12.2 Unless it is generally known or legally known to him in any other way, the supplier will not make information obtained from the customer accessible to third parties. Insofar as the customer has agreed to pass on orders to third parties, these must be made in writing accordingly.

## **13. Assignment of claims**

Assignment of claims is only permitted with the prior written consent of the customer.

## **14. Insolvency / insolvency of the supplier**

If the supplier ceases to make payments, a provisional insolvency administrator is appointed or insolvency proceedings are initiated or opened for the assets of the supplier, the customer is entitled to

withdraw from the contract in whole or in part or to terminate the contract. In this case, the customer can make use of the equipment available for the continuation of the work or the deliveries and services previously performed by the supplier for a reasonable fee.

## **15. Code of conduct for supplier, security in the supply chain**

15.1 The supplier is obliged to comply with the laws of the applicable legal system (s). In particular, he will not participate actively or passively, directly or indirectly in any form of bribery, violation of the fundamental rights of his employees or child labor. He will also take responsibility for the health and safety of his employees in the workplace, comply with environmental protection laws and promote and demand that suppliers comply with this code of conduct in the best possible way.

15.2 The supplier takes the necessary organizational instructions and measures, in particular in the areas of property protection, business partner, personnel and information security, packaging and transport, in order to ensure security in the supply chain in accordance with the requirements of corresponding internationally recognized initiatives based on the WCO SAFE Framework of Standards ( e.g. AEO, C-TPAT). The supplier will also familiarize himself with the customer's Code of Conduct, which is available at [www.brockhaus.com](http://www.brockhaus.com). He protects his deliveries and services to the customer or to third parties designated by the customer against unauthorized access and manipulation. He only uses reliable personnel for such deliveries and services and obliges any subcontractors to take appropriate measures.

15.3 If the supplier culpably violates the obligations from section 15, the customer is entitled to withdraw from the contract or to terminate the contract without prejudice to further claims. If it is possible to remedy the breach of duty, this right may only be exercised after a reasonable period of time to remedy the breach of duty has expired without result.

## **16. Product-related environmental protection, declaration obligations, dangerous goods**

16.1 If the supplier delivers products whose product components are listed in the list of substances subject to declaration at the time of the order ([www.bomcheck.net/suppliers/restricted-and-declarable-substances-list](http://www.bomcheck.net/suppliers/restricted-and-declarable-substances-list)) are or which are subject to material restrictions and / or material information requirements due to laws (e.g. REACH, RoHS), the supplier must declare these substances at the latest when the products are first delivered. The above applies with regard to laws only insofar as these apply at the place of business of the supplier or the

customer or at the place of receipt specified by the customer.

16.2 If the delivery contains goods that are classified as dangerous goods in accordance with international regulations, the supplier shall notify the customer of this at the latest with the order confirmation in a form agreed between the supplier and the customer.

## **17. Provisions on export control and foreign trade data**

17.1 The supplier must meet all requirements of the applicable national and international customs and foreign trade law ("foreign trade law"). The supplier must notify the customer in writing no later than two weeks after placing the order and in the event of changes, all the information and data required by the customer to comply with foreign trade law for export, import and re-export, in particular:

- all applicable export list numbers including the Export Control Classification Number according to the US Commerce Control List (ECCN);
- the statistical goods number according to the current goods classification of the foreign trade statistics and the HS (Harmonized System) code and
- country of origin (non-preferential origin) and, if requested by the customer, supplier declarations on preferential origin (for European suppliers) or certificates for preference (for non-European suppliers) .

17.2 If the supplier violates his obligations in accordance with clause 17.1, he bears all expenses and damages that arise for the customer, unless the supplier is not responsible for the breach of duty.

## **18. Reservation clause**

The fulfillment of the contract by the customer is subject to the condition that there are no obstacles due to national or international regulations of foreign trade law as well as no embargoes and / or other sanctions.

## **19. Designation as a reference customer**

The supplier undertakes only to name the customer as a reference customer and / or to advertise with products that he has developed for the customer within the framework of the contractual relationship and / or press releases only with the prior written consent of the customer or make other public statements within the framework of the contractual relationship.

## **20. Additional provisions**

As far as these terms and conditions do not contain any regulation, the statutory provisions apply.

## **21. Place of jurisdiction, applicable law**

21.1 German law applies.

21.2 The exclusive place of jurisdiction is Plettenberg if the supplier is a businessman.

21.3 The client is also entitled to sue at the seat of the supplier.