

## **General Terms and Conditions of Purchase of Otto Bihler Maschinenfabrik GmbH & Co. KG**

### **I. Scope of application, deviating terms and conditions of the Supplier**

1. For all orders placed by Otto Bihler Maschinenfabrik GmbH & Co. KG (Purchaser) with the Supplier, these General Terms and Conditions of Purchase ("Terms and Conditions of Purchase") shall apply.
2. These Terms and Conditions of Purchase shall apply exclusively. The Purchaser does not accept any conflicting or deviating general terms and conditions of the Supplier unless he expressly agrees to them in individual cases.
3. These Terms and Conditions of Purchase shall also apply to all contracts to be concluded in the future for orders placed by the Purchaser with the Supplier, even if these Terms and Conditions of Purchase have not been expressly referred to in the individual case.

### **II. Written/Text Form, order, conclusion of contract, documents, amendments, supplements**

1. The content of the contract concluded between the Purchaser and the Supplier shall be governed exclusively by the respective order. The contract between the parties shall only be concluded if the order is confirmed by the Supplier to the Purchaser within 3 working days of its receipt by the Supplier by means of an order confirmation and stating a binding delivery date, unless otherwise agreed in the individual case. Deviations from, changes to or additions to the order within the framework of the order confirmation shall only become part of the contract in case they are expressly confirmed by the Purchaser. In case the aforementioned documents are exchanged by telecommunication, they are also valid without signature, unless otherwise agreed.
2. If written form has been agreed in individual cases, the parties agree that this requirement shall also be met by the dispatch or exchange of faxes and/or PDFs (by e-mail), provided that the fax and/or PDF represents the handwritten signature of an authorised signatory representative of the parties.
3. The Purchaser reserves all property rights, copyrights and other industrial property rights to all documents belonging to the order - including those in electronic form. The documents provided to the Supplier by the Purchaser are confidential and may not be reproduced, made accessible to third parties or otherwise disseminated by the Supplier without the express written consent of the Purchaser. The Purchaser shall only make documents designated by the Supplier as confidential accessible to third parties with the Supplier's written consent.

### **III. Prices, price changes, terms of payment**

1. The prices stated in the order shall apply to all order contents up to the delivery date as fixed prices. Price increases by the Supplier shall only be effective vis-à-vis the Purchaser if confirmed in writing by the Purchaser in advance.
2. Unless otherwise agreed by the parties, the prices are DAP (Incoterms 2010 - "Delivered At Place") place of destination of the Purchaser, i.e. including packaging, customs, insurance, dispatch, installation and assembly, plus the applicable statutory value added tax.
3. Unless otherwise agreed, payments by the Purchaser shall be made within 14 days less 3% discount, within 45 days without deduction. The payment period shall commence as soon as the delivery and/or service has been rendered in full and a proper and verifiable invoice from the Supplier has been received by the Purchaser. Each order shall be invoiced separately. Discounting shall also remain acceptable in the event of offsetting or retention due to a defect in the delivery; in this case, however, the payment period shall not commence until the defect has been completely remedied or the replacement delivery has been made.
4. Without the prior written consent of the Purchaser, the Supplier shall not be entitled to assign its claims against the Purchaser in whole or in part or to dispose of them in any other way.

### **IV. Delivery time, delivery dates / periods, acceptance, delay in delivery, contractual penalty**

1. The delivery time or period stated in the order shall be deemed binding. For the timeliness is decisive
  - a) in the case of deliveries, receipt of the delivery by the Purchaser;
  - b) in the case of other services and deliveries involving installation and/or assembly, acceptance by the Purchaser.
2. In case a delay in delivery or performance is foreseeable for the Supplier prior to the delivery date or expiry of the delivery period, the Supplier shall notify the Purchaser immediately, e.g. by fax or e-mail, and obtain the latter's decision.

3. In the event of a delay in delivery or performance, the Supplier shall be obliged to pay the Purchaser a lump-sum compensation if the Purchaser claims this. This amounts to 0.5% of the respective net order value of the delayed delivery for each completed week of delay in delivery, but a maximum of 5% of the respective total net order value in total. The assertion of further damages shall be reserved to the Purchaser irrespective of the assertion of lump-sum damages. Any lump-sum damages paid by the Supplier shall be deducted from any further claim for damages based on the Supplier's default.
4. The unconditional acceptance of a delayed delivery or service does not constitute a waiver by the Purchaser of its rights with respect to the delayed delivery or service.

## **V. Place of Performance, Transfer of Risk, Acceptance**

1. Unless otherwise agreed, the place of performance for deliveries, services and payments shall be the registered office of the Purchaser.
2. In the case of delivery, the risk shall pass to the Purchaser upon receipt by the Purchaser, in the case of delivery with installation and assembly or, in the case of services, with acceptance by the Purchaser.

## **VI. Obligation to inspect and give notice of defects, liability for defects, subsequent performance, costs of subsequent performance**

The Purchaser's duty to inspect and give notice of defects as well as the Supplier's liability for defects shall be governed by the law, modified by the following provisions:

1. The acceptance of the delivery by the Purchaser shall be subject to an inspection for absence of defects, including correctness and completeness, insofar and as soon as this is feasible in the ordinary course of business. In the case of bulk items (more than 10 identical individual items), the Purchaser shall satisfy its obligation to inspect and give notice of defects if it randomly inspects the items. In this respect, the Supplier waives the objection of delayed notification of defects. Payments on the part of the Purchaser shall not constitute recognition of the absence of defects. Deliveries with installation and / or assembly require an acceptance in the factory of the Purchaser by the Purchaser.
2. The right to choose the type of subsequent performance is generally vested in the Purchaser. The Supplier shall have the right to refuse the type of subsequent performance chosen by the Purchaser if this is only possible at disproportionate cost. In the event of a replacement delivery or a new production, the Purchaser has the right to return the originally delivered items to the Supplier at the Supplier's risk and expense.
3. In the event that the Supplier does not begin to remedy the defect immediately after the Purchaser's request to remedy the defect, the Purchaser shall be entitled in urgent cases, in particular to avoid acute risks or to avoid major damage, to remedy the defect itself at the expense of the Supplier or to have it remedied by a third party.
4. If the defect consists in a legal defect for which the Supplier is responsible, the Supplier shall also indemnify the Purchaser against any claims by third parties, including the reasonable costs of avoiding such claims.
5. In addition, the Supplier shall reimburse all costs incurred by the Purchaser in connection with the defective delivery of the subject matter of the contract (transport, travel, labour, installation/ removal, material costs as well as other costs incurred in connection with the remedy of defects).
6. The Purchaser's warranty claims shall become statute-barred after 24 months. In the case of delivery, this period shall commence upon receipt by the Purchaser or, in the case of services, upon installation and, in the case of services intended for resale by the Purchaser, upon delivery of the item to the Purchaser's customer. It ends at the latest 30 months after delivery to the Purchaser or the third party named by the Purchaser. In the case of delivery with installation and/or assembly, for services or in the case of the agreement of a formal acceptance, the period begins with the acceptance by the Purchaser.
7. The statute of limitations for warranty claims shall be suspended upon receipt by the Supplier of a written notice of defects by the Purchaser. In the case of replacement deliveries and removal of defects, the warranty period for replaced and repaired parts begins to run again. This shall not apply if the Supplier was expressly or recognizably by the Purchaser not obliged to do so, but only made the replacement delivery / remedy of defects as a gesture of goodwill or for similar reasons.

## **VII. Liability, product liability and insurance**

1. The Supplier shall be responsible for all claims asserted against the Purchaser by third parties due to personal injury or damage to property attributable to a product supplied by him or a service rendered by him. In such cases, the Supplier shall be obliged to indemnify the Purchaser against such claims by third parties, including the reasonable costs of avoiding such claims. In cases of fault-based liability, this shall only apply if the Supplier is at fault. If the cause of the damage lies within the area of responsibility of the Supplier, it must prove that it is not at fault.
2. In the above case, the Supplier shall bear all costs and expenses, including the costs of any legal proceedings, legal defence and/or recall action. The Purchaser shall inform the Supplier of the scope and content of the recall action and give the Supplier the opportunity to cooperate, unless the Supplier's information or participation is not possible due to particular urgency.
3. The Supplier shall be obliged to maintain product liability and recall costs insurance with an appropriate coverage insured. This has to be proven to the Purchaser.
4. The Supplier shall compensate the Purchaser for all damages or indemnify the Purchaser against all direct or indirect claims of third parties, including claims for death, injury to body, health, property and/ or other rights, caused by the delivery of the contractual items, the performance of services and/ or the breach of other contractual obligations by the Supplier. This shall not apply in the case of a statutory liability based on fault in case the Supplier is not at fault.
5. The statutory liability of the Supplier in all other respects shall remain unaffected hereby.

## **VIII. Right of withdrawal and termination**

1. Irrespective of the statutory withdrawal rights, the Purchaser shall be entitled to terminate the contract immediately or to withdraw from the contract if the Supplier ceases to supply its customers for reasons for which it is responsible, if a material deterioration in the Supplier's financial circumstances occurs or threatens to occur which endangers the fulfilment of the delivery obligations towards the Purchaser. The same shall apply if an application has been filed to open insolvency proceedings against the Supplier's assets.
2. In case the Purchaser has exercised its contractual right of termination or rescission in accordance with clause 1, the Supplier shall compensate the Purchaser for the resulting damages, unless the Supplier is not responsible for the reasons leading to the termination/ rescission.
3. Further legal claims shall not be limited by the above provisions.

## **IX. Rights of use, industrial property rights, copyrights, know-how**

1. The Supplier shall assign to the Purchaser or grant to the Purchaser the non-exclusive, transferable, worldwide and temporally unlimited rights to use the supplies and services and the industrial property rights existing thereon to the extent contractually required, in particular to reproduce them, integrate them into other products and to distribute and distribute them worldwide alone or in conjunction with other products.
2. The above assignment of rights or granting of rights shall also apply insofar as the content of the delivery and / or service is software and includes the rights to use the software and the customary industry documentation to be supplied with it in connection with the supplies and services for all business purposes of the customer. The Supplier shall also provide the Purchaser with the source codes with developer documentation, in each case in a format customary in the industry, and warrants that it has not integrated any open source software into the software, unless the Purchaser has expressly agreed to this.
3. The Supplier warrants that the supplies and services are free from rights of third parties and do not violate applicable law. Each party shall immediately notify the other in writing of any claims asserted against it for infringement of such rights or applicable law. In this context, the Supplier undertakes to indemnify and hold the Purchaser harmless from and against all claims of third parties in this respect. It further undertakes to reimburse the customer for all costs and expenses and the reasonable costs of legal defence. The Supplier's obligation to indemnify shall not apply if the Supplier is not responsible for the infringement of the rights of third parties or the applicable law.
4. In all other respects, clauses VI. and VII. shall apply.
5. With respect to know-how and industrial property rights of the Purchaser which arose prior to the commencement of the cooperation, all rights shall remain with the Purchaser.

6. Know-how which arises jointly by the Supplier and the Purchaser during the cooperation shall remain joint property. In respect of this know-how, joint applications for industrial property rights may be filed where appropriate.

## **X. Confidentiality**

1. The Purchaser and the Supplier undertake to treat all knowledge of confidential information and trade secrets of the respective other party acquired within the scope of the business relationship, including business relationships prior to conclusion of the contract, and within the scope of its performance, as confidential for an unlimited period of time, in particular also after termination of the cooperation, and in any event to take all reasonable precautions to protect their confidentiality and not to make them accessible to third parties. This includes in particular technical information, plans, data, ideas, software, trade secrets, documentation, source codes and other information that is marked as confidential or recognizable as such.
2. The obligation to maintain secrecy shall not apply to confidential information,
  - (a) which were already in the public domain at the time of disclosure or subsequently become publicly known, without a non-observance of the above provisions being (partly) responsible for this,
  - (b) expressly disclosed by a party on a non-confidential basis,
  - (c) were already in the lawful possession of the other party prior to disclosure; or
  - (d) subsequently disclosed to it by a third party without breach of any confidentiality obligation. The burden of proof for the existence of one of the above exceptions shall be borne by the party invoking it.

## **XI. Passing on orders to third parties, provision of materials, availability of spare parts**

1. The complete or partial transfer of orders by the Supplier to third parties is not permitted without the written consent of the Purchaser and entitles the Purchaser in such case to withdraw from the contract in whole or in part and to claim for damages.
2. Materials provided by the Purchaser shall remain the property of the Purchaser. They shall be stored separately by the Supplier free of charge, labelled and secured against unauthorised inspection and use. Any processing or transformation of the material shall take place on behalf of the Purchaser. The latter becomes the direct owner of the new or transformed products.
3. Tools, moulds, samples, models, drawings, etc. provided by the Purchaser, as well as products manufactured thereafter, may not be passed on by the Supplier to third parties or used for purposes other than the contractual purposes without the prior written consent of the Purchaser. They must be secured against unauthorised inspection or use. Subject to any further rights, the Purchaser may demand their surrender if the Supplier breaches these obligations.
4. The Supplier is obliged to keep spare parts available for a reasonable period corresponding to the normal service life of the product supplied, but at least for five years from delivery of the last product.

## **XII. Jurisdiction, Applicable Law, Partial Invalidity**

1. The place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be Munich. The Purchaser shall also be entitled to pursue legal action at the Supplier's head office.
2. The laws of the Federal Republic of Germany shall apply.
3. If provisions of these Terms and Conditions of Purchase or parts thereof should be or become wholly or partially invalid or ineffective, the validity of the remaining provisions of these Terms and Conditions of Purchase shall remain unaffected thereby. Insofar as the invalid provisions contain an effective, valid appropriate part, this part shall be maintained. The parties shall endeavour to find a substitute valid provision which comes as close as possible to the legal, economic and factual content of the invalid provision.

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