

# **BMA Braunschweigische Maschinenbauanstalt GmbH**

## **General Terms and Conditions of Purchase**

## **1. Decisive conditions**

1.1 For all orders that BMA Braunschweigische Maschinenbauanstalt GmbH places with a supplier, the following BMA Braunschweigische Maschinenbauanstalt GmbH (hereinafter “BMA”) General Terms and Conditions of Purchase shall apply exclusively. The supplier’s own general terms and conditions or other deviating conditions shall only be valid if BMA has explicitly acknowledged these in writing.

1.2 BMA’s General Terms and Conditions of Purchase shall also apply in the event that BMA accepts the supplier’s delivery without reservation in knowledge of the supplier’s terms and conditions that oppose or deviate from BMA’s General Terms and Conditions of Purchase. BMA hereby explicitly discounts any references or notes from the supplier regarding the validity of their general terms and conditions.

1.3 As soon as these General Terms and Conditions of Purchase have formed the basis of a business transaction concluded with the supplier, they shall also apply, under exclusion of deviating conditions of the supplier, to all future deliveries and services from the supplier to BMA, insofar as BMA does not use other general terms and conditions as a basis for these or something different is explicitly agreed between the contracting parties.

## **2. Orders**

2.1 Orders from BMA shall only be valid if they are made in writing. A signature on orders from BMA is not required. Text format is allowed if BMA’s order has been made via fax, e-mail or any electronic data transmission system.

2.2 Even after the order has been confirmed by the supplier, BMA may demand reasonable changes to the delivery items in terms of construction and implementation.

2.3 The supplier is not permitted to transfer its contractual rights or obligations to a third party without BMA’s explicit written consent. The procurement by the supplier of a large part of or an entire delivery or service from a third party shall also require BMA’s explicit written consent. A breach of the above conditions shall justify BMA’s withdrawal from the contract without the supplier being able to derive any claims from this.

2.4 The supplier is not permitted to use its order with BMA’s for advertising purposes.

### **3. Prices, invoice, payment**

3.1 The price specified in BMA's order shall be binding. In the absence of a deviating agreement, the price shall include "free house" delivery, including packaging.

3.2 The invoice must be sent immediately after the delivery by e-mail to [invoices@bma-worldwide.com](mailto:invoices@bma-worldwide.com). It must contain the date, order number and supplier number. If these requirements are not met, the invoice shall be deemed as not having been issued.

3.3 Payment shall be made after receipt of goods as per the contract and upon receipt of the proper invoice in accordance with the date of payment stated in BMA's order.

3.4 The supplier does not have the right to assign any claims it is entitled to from its supplier relationship with BMA or have these collected by a third party without BMA's written consent.

3.5 The receipt of the delivered goods and/or the payment for these by BMA does not represent an acknowledgement and is made under reservation of checking the invoice, as well as asserting claims for defects and/or claims for damages.

### **4. Delivery dates, delayed delivery**

4.1 The delivery dates stated in BMA's order are binding. For adherence to the delivery deadline, the receipt of the goods at the place of receipt or use named by BMA shall be decisive.

4.2 BMA is not obliged to take receipt of early deliveries or partial deliveries that have not been agreed.

4.3 The supplier undertakes to promptly inform BMA in writing if circumstances arise or become discernible to it which means that it will not be possible to comply with the agreed deadline. In the event of a delayed delivery, the supplier undertakes to deliver the products in the fastest possible way at its own expense, insofar as BMA has fulfilled the contract.

4.4 If the delivery is delayed, BMA may demand 0.5% of the order value of the delayed delivery items for every commenced week of delay as a contract penalty, but no more than 10% of the order value in total.

## **5. Force majeure**

5.1 Force majeure events which despite reasonable care could not be avoided shall release the contracting parties from their contractual obligations for the duration of the disruption and to the extent of its effect.

5.2 In such an event, the contracting parties undertake to immediately inform each other and to adjust their obligations to the altered circumstances in good faith.

5.3 If the impediment lasts longer than two months, each contracting party reserves the right to withdraw from the contract with respect to the unfulfilled parts of the contract.

## **6. Shipping, transfer of risk**

6.1 If nothing else has been stipulated, the delivery shall be DAP (DAP in accordance with Incoterms 2010) to the destination named by BMA.

6.2 The supplier undertakes to attach the corresponding delivery notes to the deliveries. The delivery note must include BMA's order number, supplier number and item number of the order, as well as the BMA parts number.

## **7. Quality and documentation**

7.1 For its deliveries the supplier must comply with the accepted rules of engineering, safety regulations and the agreed technical data. If the supplier has received drawings, templates or other requirements from BMA, it shall comply with these in as far as the execution of the order and the characteristics of the delivery item are concerned. Amendments to the delivery item shall require prior explicit consent from BMA in writing. If the supplier delivers production material to BMA, the following conditions shall also apply, if in the individual case nothing else has been requested in writing by BMA or has been agreed with the supplier.

7.2 To ensure the quality of its products supplied to BMA, the supplier undertakes to establish, use and maintain an effective quality management system (QM system) in accordance with DIN EN ISO 9000 et seqq., for which it shall be responsible. The supplier may implement an alternative system instead of this; this must, however, meet at least all of the quality management content requirements of the QM system mentioned above.

7.3 For parts specifically identified in the technical documents or by separate agreement, the supplier shall keep special records regarding when, by which method and by whom the delivery items relating to the document-specific characteristics were checked and what the results of the requested quality tests were. The testing documents shall be stored in accordance with legal requirements and shall be given to BMA as required. The supplier shall obligate pre-suppliers to the same extent in the framework of what is legally possible.

## **8. Dangerous substances and preparations**

8.1 For goods and materials as well as procedures which due to laws, regulations, other conditions or due to their composition and effect on the environment require special treatment in terms of transport, packaging, labelling, storage, handling, production and disposal, the supplier shall respect the legal regulations.

8.2 The supplier shall in this case provide the necessary paperwork and documents to BMA before confirming the order. In particular, any dangerous substances and water hazardous substances shall only be delivered to BMA after submitting an EC safety data sheet and approval by BMA. If the requirements change in the course of the supplier relationship, the supplier shall immediately provide BMA with the corresponding paperwork and documents for the amended requirements.

8.3 BMA reserves the right to return dangerous substances and water hazardous substances which were prepared for testing purposes to the supplier at no cost.

8.4 The supplier shall be liable for all damages arising from non-compliance with the existing legal regulations.

## **9. Packaging**

9.1 The requirements in BMA's Dispatch and Packaging Guidelines shall be complied with.

9.2 The supplier shall take back used, empty packaging free of charge. Should this not be possible, then the supplier shall bear the corresponding disposal costs.

## **10. Claims for defects/guarantee**

10.1 In the event of a defective delivery, the statutory provisions shall apply, unless otherwise stated in the following terms and conditions.

10.2 Upon receipt of the goods delivered by the supplier, BMA shall check only that these correspond to the type and quantity of goods and for directly visible external transport damage. BMA shall report any defects identified in this check to the supplier within 14 days of the delivery. BMA shall notify the supplier of any defects which are only identified by BMA during the processing or intended use of the delivered goods within 14 days of identifying the defect. The Supplier waives in respect of this its right under Section 377 Handelsgesetzbuch [German Commercial Code] (HGB) to object on the grounds of late notification of defects.

10.3 In the event of a defective delivery, BMA may in addition to the standard statutory claims for defects also demand at its discretion a replacement delivery or remedy of faults free of charge. In both cases, the supplier shall bear all resultant costs. In the case of a replacement delivery, the supplier shall take the defective part back at its own expense.

10.4 If the supplier's replacement or remedy of faults is delayed, BMA may, after the setting of a grace period and without threat of declining delivery, purchase the defective parts from a third party or have the fault remedied by a third party. In both cases, the supplier shall bear all resultant costs. In urgent cases, BMA shall be entitled to these rights after prior discussion with the supplier, even if the supplier is not delayed.

10.5 If through the delivery of defective parts any additional costs should arise for BMA from inspecting warehouse stock, recalls, assembly and disassembly costs, return costs and additional transport costs, the supplier shall be obliged to compensate BMA.

10.6 The limitation period for claims for defects shall be 24 months from the time the goods are delivered at the places of receipt or use stipulated by BMA, if nothing else has been stipulated.

## **11. Product liability, manufacturer liability**

11.1 If a claim is filed against BMA for manufacturer liability or for a breach of official safety regulations according to domestic or international law due to the defectiveness of a product made by or introduced into circulation by BMA, the supplier undertakes to free BMA at its first request from all claims or compensate for damages, if the defectiveness of BMA's product can be traced to a defect in the goods delivered by the supplier.

This shall also include costs arising from BMA's legal assistance or otherwise connected with defending product liability claims.

11.2 In product liability cases in accordance with Section 11.1, the supplier shall within the scope of what is reasonable provide BMA with all the necessary information and support in order to defend the claims.

11.3 If due to the defectiveness of goods delivered by the supplier, BMA is obliged to carry out a product recall or such a recall is necessary due to risk to human health or life, the supplier shall be obliged to assume the resultant costs.

11.4 The supplier undertakes to conclude sufficient product liability insurance to cover product liability risks, including product recall risks. At BMA's request, it shall immediately provide evidence of the conclusion of such insurance.

## **12. Property rights**

The supplier guarantees that all deliveries shall be free from third-party copyrights and that no third-party copyrights shall be infringed by the delivery and contractual use of the delivery items by BMA and its customers. This shall also apply to property rights that have been published abroad. The supplier shall indemnify BMA and its customers from claims of third parties for any infringement of property rights and shall bear all costs incurred by BMA in relation to this. In the event of property rights infringements, BMA also reserves the right at its discretion to approve the use of infringed property rights by the authorised person at the supplier's expense.

### **13. Retention of title, production materials**

13.1 BMA does not recognise any extended retention of title in whatever form for the supplier.

13.2 Any production and testing materials (in particular, parts, raw materials or tools, etc.) as well as documents, templates, models, data, etc. given to the supplier by BMA shall remain the property of BMA. The supplier undertakes to affix a note of BMA's ownership to production and testing materials provided by BMA and to insure these at their replacement value against fire, water and theft at its own expense. The supplier shall provide evidence of the existence of the relevant insurance to BMA. If necessary, the supplier shall carry out the maintenance required at intervals at its own expense. It shall report any damage or faults to BMA immediately.

13.3 Processing, upgrading or incorporation by the supplier of production and testing materials provided by BMA shall be done on behalf of BMA. If the processing, conversion or incorporation leads to an inseparable mixing of BMA's items and those of the supplier or a third party, BMA shall acquire joint ownership of the newly resulting item in the ratio of the value of its items to the new item. If the processing, conversion or incorporation is made in such a way that its items are deemed an essential component of the supplier's main item, it is agreed that the supplier shall grant BMA co-ownership of the main item in the ratio of the value of its items to the new item. In both cases, the supplier shall keep BMA's co-ownership safe for BMA.

13.4 The supplier shall use the production and testing materials, documents, templates, models, data, etc. given to the supplier by BMA exclusively for the for production of the goods ordered by BMA. These must be handed back to BMA immediately without charge at any time upon corresponding request. If the supplier has co-ownership of the production and testing materials, the goods shall be handed over gradually against payment of the suppliers' co-ownership share of the goods.

13.5 The supplier may only exercise a right of retention if the underlying claim has been acknowledged in writing by BMA or has been legally established.



## **14. Confidentiality**

14.1 The supplier undertakes to treat all orders from BMA and all business and technical details connected with these and other information as BMA's trade secrets and keep them strictly confidential. These may only be disclosed to third parties with BMA's prior express written consent.

14.2 The supplier undertakes to obligate sub-suppliers to confidentiality to the same extent. The supplier shall be permitted to use the confidential information of BMA that it becomes aware of only for the purpose for which it was intended.

14.3 The obligation to confidentiality shall exist beyond the end of the supplier relationship. After the supplier relationship has ended, the supplier undertakes to return all trade secrets received that have been incorporated into or stored on electronic media back to BMA. Any trade secrets belonging to BMA must be removed from the supplier's data processing systems; copies of these, in whatever format, must be destroyed in such a way that a reconstruction is impossible.

## **15. Preferential processing**

The supplier shall confirm through a "Supplier declaration according to Regulation 2015/2447 (EU)" that the goods have been manufactured in the EU and correspond to the rules on the definition of the concept "originating products" which apply for the trade of goods on preferential terms. Production in other countries shall require BMA's explicit and written consent and must be identified properly and in compliance with the relevant legal regulations. The supplier declaration may be provided as a long-term declaration, no longer than for the time period according to the Regulation, or as an individual declaration for each invoice. The supplier undertakes, if necessary, to provide evidence of the accuracy of its supplier declaration by providing an information sheet and by compensating BMA for any damages which have resulted from an inaccurate supplier declaration.

## **16. Place of performance, applicable law, place of jurisdiction**

The place of performance for the supplier's obligations shall be the place of receipt or use designated by BMA. The place of performance for BMA's payment obligations shall be BMA's registered office.

**17. Gesetzlicher Mindestlohn [German statutory minimum wage] (MiLoG), Arbeitnehmerentsendegesetz [German law on posting workers] (AEntG), Prohibition of illegal labour**

17.1 The supplier undertakes to ensure that workers employed by it or its subcontractors in the context of this contract receive the statutory minimum wage in accordance with the Mindestlohngesetz (MiLoG) or if in performing their services they fall within the scope of the Arbeitnehmerentsendegesetz (AEntG), that they receive the respective minimum wage in this case and that they are granted proper working conditions. The supplier shall also comply with all standard and statutory obligations to pay contributions to social insurance companies, professional associations and other organisations.

The supplier also undertakes to ensure that these regulations are contractually upheld by subcontractors it commissions and that the latter likewise undertake to ensure that the regulations are contractually upheld by their subcontractors.

17.2 If any claims are filed against BMA due to non-compliance with these obligations, the supplier shall indemnify BMA from these claims and demands and shall compensate BMA for any damages.

17.3 The supplier shall refrain from any type of illegal labour.

17.4 BMA has the right to have suppliers audited once a year by an independent audit company in Germany which shall be authorised to gain an overview of the situation and for this purpose inspect the relevant documents at the supplier's premises so as to ascertain whether the supplier is complying with its obligations in accordance with MiLoG or AEntG.

**18. Concluding provisions**

In the event that one or more provisions of this contract is or becomes invalid, the validity of the other provisions shall remain unaffected. The invalid provision shall be replaced by one which to the extent legally possible comes closest in terms of location, time, extent and scope to what was intended by the contracting parties according to the original purpose of the invalid provision. The same applies to any loopholes in the contract.

**19. Applicable law, place of jurisdiction**

19.1 The law of the Federal Republic of Germany shall apply exclusively. The UN Vienna Convention for the International Purchase of Goods (CISG) shall have no application.

19.2 The place of jurisdiction for all disputes arising from the business relationship between the contracting parties shall be Braunschweig. BMA also reserves the right to file a claim at its discretion against the supplier in the latter's general place of jurisdiction.