

# General Contract Terms of Purchase of Baumüller Nürnberg GmbH

## 1. Conclusion of Contract

1.1. The following General Contract Terms of Purchase shall apply for all purchase contracts, contracts for work and materials supplied (*Werklieferungsvertrag*) or contracts for services as well as other contracts of Baumüller Nürnberg GmbH (hereinafter referred to as Contractor) insofar as such do not contradict mandatory statutory provisions or are otherwise determined in the written order of Contractor. These Terms of Purchase shall also apply for all supplementary and successive contracts.

1.2. As a result of the acceptance of the order, Supplier expressly recognizes the contract terms of Contractor and waives the inclusion of its own deviating contract terms.

All delivery terms deviating from the contract terms of Contractor shall always require a written confirmation by Contractor in order to be legally valid.

Deviating contract terms shall also not become component parts of the contract if these are transferred in an order confirmation or in a commercial confirmation letter or if deliveries are received by Contractor without express objection made by Contractor.

Should Supplier not be in agreement herewith, it must then notify Contractor hereof immediately in writing. In this case, Contractor reserves the right to withdraw its order and no claims of any kind may be made against Contractor.

1.3. In the offer, Supplier shall keep exactly to the inquiry and, in the case of deviations, shall expressly reference such. The offer shall be made at no charge and shall not establish any obligations for Contractor in any way.

1.4. Contracts granted shall be confirmed by Supplier on the order form of Contractor in the designated contract confirmation area with stamp and signature of Supplier.

The confirmations must be received by Contractor within 10 days or, if possible, sooner. Otherwise, Contractor shall be entitled to withdraw without Supplier being entitled to make any (damage) claims.

1.5. Orders, agreements, amendments shall only be binding if they are granted/ confirmed by Contractor in writing. The correspondence is to be conducted only with the ordering purchasing department of Contractor.

## 2. Proof of Origin / Product

2.1. All proof demanded by Contractor (e.g. supplier declarations /trade certificates /manufacturer conformity declarations ("*Konformitätserklärungen*", "*CE*") shall be made available by Supplier and shall include all necessary information and be properly signed, without undue delay and at no cost. This shall also apply for all documents which are necessary for the use, installation, assembly, processing, warehousing, for the operation, servicing, inspection, maintenance and repair of the delivered goods.

2.2. Insofar as deliveries are subject to foreign trade regulations, for example, pursuant to AWG, AWV, Dual Use VO, KWKG as well as the other regulations, e.g. US export control laws/international (UN) embargo law, Supplier shall observe, under its own responsibility, all pertinent provisions. Any necessary export approvals shall be obtained by Supplier, also on behalf of Contractor. Should Contractor not receive a necessary export approval, it shall be entitled to cancel the contract.

## 3. Delivery and Performance Dates

3.1. All delivery and performance dates stated in the orders / correspondence of Contractor are fixed dates and are to be observed in a binding manner when received by Contractor. This shall also apply if no express reference is made hereto by Contractor.

3.2. Delays of deliveries /other date delays shall be notified to Contractor by Supplier on the date of becoming known without undue delay in writing. Such notifications do not signify, however, any recognition of new dates by Contractor. Partial deliveries and/or deliveries prior to the agreed delivery date at Contractor shall only be permissible with express approval of Contractor.

3.3. The acceptance of delayed deliveries/services shall not preclude a claim of damages due to late delivery. With delayed delivery, Contractor shall have the right to demand liquidated damages of 1% per week commenced but a maximum, however, of 5 % of the total contract value of the delivery; this shall not apply if Supplier proves that Contractor incurred no damage or a substantially lower damage. Proof of a higher damage caused by delay is reserved.

3.4. Contractor shall be entitled to cancel the contract in whole or in part without payment of compensation if the creditworthiness / capability of delivery of Supplier deteriorates in a manner which puts the performance of the contract at risk, it discontinues making payments, a check or promissory note protest is filed against it, a certificate of nulla bona (*Pfandabstand*) is declared against it or the opening of an insolvency proceeding is filed against its assets.

## 4. Prices / Delivery / Transfer of Risk

4.1. Insofar as not otherwise agreed with individual deliveries, the prices are understood to be fixed prices including packaging /other costs freely contractually agreed place of destination (corresponding to DDP pursuant to Incoterms 2000) as the place of transfer of risk.

4.2. The (additional) costs accruing as a result of failure to meet agreed shipping terms /as a result of faster shipment with delay of shipment shall be borne by Supplier.

4.3. Contractor expressly reserves the recognition of additional / lesser deliveries.

4.4. Delivery and shipment shall be made exclusively at the cost and risk of Supplier. Insofar as in the exceptional case a deviation is agreed hereto with a price calculation ex works /sales warehouse of Supplier, the shipments are to be made at the respectively lowest cost, insofar as Contractor does not expressly prescribe a certain type of shipment. Also in these cases, the risk shall be transferred first upon receipt of the goods or the service by Contractor (DDP pursuant to Incoterms 2000).

4.5. The delivery weights / delivery amounts / delivery measurements determined by Contractor upon acceptance of the goods shall be deemed to be binding on both parties.

4.6. The entire delivery documents are to be attached to the respective shipment. These must be accessible from the outside, protected against water damage and placed thereon in a manner that they cannot be lost.

4.7. The goods to be delivered are to be packed, taking into account the transport conditions, in a careful, commercial manner and taking into account statutory provisions. Supplier shall be liable for all damages which result due to insufficient packaging. Pursuant to the statutory provisions, Contractor shall send back transport, packaging/sales packaging to Supplier at Supplier's cost.

## 5. Payments

5.1. In the event that no special payment terms are agreed, accounts receivable of Supplier shall become payable and due on the condition of the submission of an invoice which is capable of being checked and which contains all relevant order data (in particular, order number, order item, etc) as well as the complete and defect-free contract performance by Supplier.

5.2. Payments shall be made, at the choice of Contractor, either within 14 days minus 3 % discount or within 30 days minus 2 % discount or within 90 days net. Insofar as not otherwise agreed, discount and payment deadline dates shall first begin to run upon receipt of the defect-free delivery/service and the proper invoice; this applies (=commencement of deadline date) respectively as of the later of the two dates.

5.3. Contractor shall be entitled to also set-off accounts receivable of Supplier with those accounts receivable which are entitled to an affiliated company of Contractor as per §§ 15 et seq. AktG as well as with such foreign and domestic companies with which Contractor is affiliated through share participations of at least 50 %. The same shall apply for any rights of retention.

5.4. Upon the acceptance of early deliveries, the deadline dates for the determination of the date of payment shall first start to run from the agreed delivery date.

## 6. Property Ownership

6.1. Unrestricted ownership title to the delivered goods shall be transferred to Contractor at the latest upon payment therefore.

6.2. The materials delivered/added by Contractor shall in any case remain the unrestricted property of Contractor regardless of the extent that a processing is undertaken. In the case of processing, Contractor shall acquire ownership title in the interim or end product and shall be deemed to be its manufacturer within the meaning of § 950 BGB.

Should the added good be combined/processed with goods not belonging to Contractor, Contractor shall then acquire co-ownership in the new good in the relationship of the value of the reserved good (purchase price plus VAT) to the new combined goods at the date of the processing. Should the processing be made in a manner that the good of Supplier is to be deemed to be the main good, it shall be deemed to be agreed that Supplier transfers proportional co-ownership; Supplier maintains the sole ownership/co-ownership on behalf of Contractor.

6.3. Insofar as the security rights to which Contractor is entitled according to the above exceed the purchase price of all not yet sold reserved goods of Supplier by more than 10 %, Contractor releases already now the exceeding security rights.

## 7. Confidentiality Obligation and Customer Protection

7.1. All drawings, models, calculations or goods from Contractor's tools transferred according to the specifications of Contractor for the performance of the order or otherwise remain the property of Contractor and may be used only for the performance of its contract and may not be transferred either to other companies or persons in sample form or otherwise and are, if not otherwise agreed, to be returned to Contractor without undue delay after performance of the contract.

7.2. Supplier shall be obligated to keep as secret and confidential copyright rights /know-how and patent rights to these goods and, if applicable, to include third parties engaged with the performance of the contract or third parties otherwise called upon (in particular, also employees/ (sub) suppliers) in this confidentiality obligation with an indication of possible damage claims by written declaration.

7.3. Supplier may only advertise with its business relationship to Contractor or its affiliated companies after prior written approval of Contractor.

## 8. Third Party Protected Rights

8.1. Supplier guarantees and assures that, by the use and the sale of the delivered goods, rights of third parties, in particular, protected rights are not infringed and shall indemnify Contractor from all claims of third parties which result from any protected rights infringement upon first demand and shall reimburse any costs accruing to Contractor or its customers, including all legal and adviser costs/other costs in connection therewith.

8.2. Contractor is not obligated to judicial clarification of the alleged right infringement but can instead, with maintenance of all claims for performance and reimbursement of damages, immediately discontinue the sale of the goods related to the alleged infringement of protected rights.

8.3. Contractor shall be entitled, at the cost of Supplier, to take action to obtain the approval for the use of the respected delivery goods from the entitled person, unless this would be associated with unreasonably high costs for Supplier.

## 9. Liability for Defects

9.1. The warranty period shall be 24 months as of commencement of operation of Contractor products with Supplier of the total machine / total system; the warranty period shall be a maximum period of 36 months as of the delivery by Supplier. In the case that an acceptance is agreed, this shall be authoritative.

The running of the warranty period shall be interrupted by the written objections of defects.

After acceptance of the remedy/cure, the above-named period for this service (= remedied or successively delivered parts) shall begin to run anew; the same shall apply for the discontinuation of unsuccessful negotiations.

In addition, Supplier declares its readiness, in the event of plausibly stated objections to defects, to grant, a reasonable warranty period extension without undue delay.

9.2. In urgent cases or if Supplier, in spite of demand to warranty performance with risk, is in default and does not perform its obligations within a fixed term stated by Contractor, Contractor can undertake the necessary measures itself at the cost of Supplier and notwithstanding its (continuing) warranty obligation.

With latent defects, Contractor reserves the right to also demand reimbursement of the costs accruing up until the discovery of the defect.

9.3. The return of goods objected to shall occur exclusively at the cost and risk of Customer; this shall include also the costs for installation/disassembly, return transport and personnel costs also with end customers of Contractor locally. Insofar as not otherwise regulated in the individual contract, the statutory provisions shall apply supplementarily.

9.4. The rights with recourse of the recipient/entrepreneur pursuant to §§ 478, 479 BGB and the presumption regulation pursuant to § 476 BGB shall be rights to which Contractor shall still be entitled also in case that no sale of consumer goods exists.

## 10. Quality Control

10.1. Supplier shall undertake respective quality controls which are appropriate in terms of type and scope to reflect the newest state of the art and, upon demand by Contractor, shall prove the existence thereof. If appropriate, the Contract parties shall conclude a respective quality control agreement supplementary to these present provisions.

Supplier shall assume full responsibility for all delivered items, parts/products and shall, in addition, guarantee the total workability thereof as well as the existence of the fitness for the agreed purpose and/or the suitability of the parts manufactured and delivered by Supplier for use by Contractor. Supplier shall be obligated to contribute its knowledge in the processing and manufacturing and application of the parts delivered by it for Contractor. This shall include the readiness to evaluate a construction of Contractor.

Supplier shall notify Contractor with regard to all modifications, circumstances and actions which are material for quality control measures. This shall also apply for knowledge which is first gained after delivery which includes, however, fundamental factors for Contractor in its quality control.

10.2. The specifications of the delivery/service are set forth in the individual or framework contracts and the observance thereof is guaranteed by Supplier.

Insofar as Supplier is transferred a sample of the delivery item and this is recognized by Contractor pursuant to Item 10.5. hereof, this sample shall apply as the quality norm.

The qualities of this sample plus supplementary description shall be met without limitation by Supplier/manufacturer with the products of the total delivery and are guaranteed.

On the basis of suitable quality control measures, Supplier/manufacturer shall comply with the quality requirements without deviation for all products. Any and all deviation from the approved sample is to be approved in writing by Contractor prior to commencement of production, cf. Item 10.9. hereof.

10.3. Supplier shall assume an independent guarantee for the correctness of stated data in its technical data books, data pages or technical specifications as well as in all documents transferred to Contractor.

Contractor places great importance on the correctness of this data as Contractor must rely on the observance of the data with the interpretation/inter-functional coordination (including interfaces) of its products.

Technical documents shall include also Contractors drawings, order regulations, testing regulations and delivery regulations as well as other detailed regulations and norms contained therein.

In the order, Contractor shall notify the Supplier/manufacturer by means of respective technical documents concerning the requirements of the ordered delivery products and with regard to their implementation conditions insofar as such demand requirements beyond the customary industrial standard. These shall be deemed to be known to Supplier and accepted if it does not request the respective documents from Contractor within five business days after the order.

The Supplier/manufacturer shall observe within its own product responsibility, independent from the quality requirements demanded by Contractor, the mandatory quality standards which are contained in the quality provisions DIN ISO 9001 as a basis for its own quality control.

10.4. Supplier is obligated to Contractor to deliver all materials, parts and products free from defects. It must, therefore, undertake suitable controls that the delivered materials, parts and products show the qualities/conditions set forth in the technical and contractual documents.

Supplier shall assume full responsibility for the quality of all products delivered by it and its subcontractors for the supply of goods.

Should Contractor discover any nonconformity from the quality as contractually agreed, Contractor shall be immediately entitled to undertake, at the cost of Supplier, independent testing concerning the origin and possibilities of correction of the nonconformity. Supplier shall be notified of the measures initiated. The test costs may not exceed a reasonable amount.

The assurance of quality at Supplier must be so reliable that -purchased preliminary materials can first be manufactured or processed or built in if the conformity with the technical documents is determined;

-a sufficient control of the manufacturing process exists which fulfills the agreed specifications (process capability) and defects occurring during the manufacturing are immediately discerned and eliminated;

-the contractually agreed delivery of materials, parts and products in a perfect quality corresponding to the technical documents is assured.

In order to assure quality, appropriate procedures are to be applied by Supplier such as, e.g. test planning, error possibility and influence analysis for processes (Process FMEA) and for Supplier's own constructions (Construction FMEA) or statistical process regulation (SPC).

Tests/testing methods which deviate from the generally acceptable norms or from such which are customary for Contractor are to be proposed to Contractor prior to commencement of manufacture.

The results of quality controls performed by Supplier itself are to be recorded. If errors are determined, then also measures for the elimination thereof must be shown in said recording.

For materials, parts and products which were developed and constructed by Supplier, in addition, documents must exist concerning first samples/life span tests.

Defective materials, parts and products which are corrected must be tested anew thereafter.

Every delivery shall require the express release by the responsible person for quality control of Supplier.

10.5. Contractor reserves the right to demand release samples. Every change, in particular, of suppliers after the first sample approval shall be deemed to be a change of the production process and shall require approval if no comparable replacement to achieve the necessary quality can be achieved by Contractor. Release samples must be representative for the series manufacture and must be carefully tested with regard to all quality characteristics. With the samples, the test results determined by Supplier shall be provided in the form of test reports/measuring certificates.

Release samples shall be marked clearly with the notation "Sample".

Contractor shall test the sample, notify Supplier of the result of the test and, with a positive result, shall release the sample for series manufacture. In the case that the first sample does not fulfill the specifications, a repetition of the acceptance shall occur with a new sample either at Supplier or Contractor.

10.6. Contractor basically presumes that Supplier shall deliver defect-free products/delivery items so that the receipt test can be restricted to a class of goods/number of items/quantity and transport damage which are externally discernible.

Contractor shall limit testing of goods received to random samples insofar as this method is customary in the normal course of business. As a result, the issue of the acceptance of delivered goods shall generally be decided by testing directives determined by Contractor; this shall also apply for testing intensity/testing scope.

With returns of goods, independent of the remedy/cure of a defect/replacement delivery, tests shall be made immediately and the cause of the defect/error as well as remedy measures shall be notified.

10.7. Each and every package unit is to be labeled in a legible manner with: name of the manufacturer/supplier, subscription number and designation, number of items per package unit.

Parts and charges upon which separately agreed tests shall be undertaken shall be expressly marked in this regard (e.g. first sample).

Supplier shall maintain a system with traceability or classification of testing results to the respective production charge during the entire production process extending over all production steps back to the base materials.

Supplier shall store results of quality control as well as recordings of measures for the elimination of errors for at least twenty years or a maximum period of thirty years, calculated as of the testing date and shall make such accessible upon demand of Contractor's authorized representative for quality control.

10.8. All necessary certificates and protocols are to be transferred to Contractor upon demand, in particular, certificates of conformity, testing protocols of final and process controls, SPC and Cpk data of critical parameters, proof of process capability. Deliveries or installment deliveries without references, certificates and protocols demanded by Contractor shall be deemed not to be delivered and shall entitle Contractor to return the goods at the cost of Supplier.

10.9. Successive deliveries may principally not show any deviations from the previously ordered products/deliveries.

Product changes – also insubstantial – shall always require a prior express written approval of Contractor. Supplier shall be liable for all damage which results from failure to observe this requirement.

Contractor shall be entitled to refuse acceptance of products delivered with non-agreed changes as being performance which is not in conformity with the Contract and can demand damages due to failure to perform or, in the case of the assumption of a delivery of products which are not in conformity with specifications, to reduce the purchase price within the framework of the resultant value reduction.

The changed condition of parts must be visible on the goods or at least, however, on the packaging or from accompanying documents.

Supplier shall notify Contractor without undue delay concerning a change in the site of production, in particular, with a change of site outside the Federal Republic of Germany.

10.10. Prior to granting of contracts to sub-suppliers, Supplier must prove that the sub-supplier is in a position to produce the product pursuant to the agreed specifications.

With parts or materials upon which particularly high demands are placed, Contractor reserves the right to test the quality control system itself of the sub-supplier of Supplier. Supplier itself must contractually assure that Contractor shall be able to exercise its testing rights pursuant to 10.13. without limitation also with the respective sub-supplier.

In all cases, Supplier shall be obligated to transfer all requirements from these quality conditions to its sub-supplier.

10.11. The means of measurement and testing used by Supplier shall correspond to the jointly determined or otherwise commonly used quality control norms as, for instance, the requirements for certification pursuant to DIN ISO 9001.

Supplier must be so equipped with testing equipment that all contractually agreed quality characteristics can be tested. This means, in particular, that Supplier must examine the testing equipment at fixed time intervals in order to maintain such as accurate in terms of size and use capability. The control of testing equipment shall occur by means of calibrated measurement norms.

10.12. Should defects occur or deviations which are relevant for safety for the end product of Contractor with other customers of Supplier with regard to the product which relate or related also to Contractor, Supplier shall be obligated to notify Contractor of these defects without undue delay after knowledge thereof.

10.13. In order to be able to assure quality which remains constant or is further improved, authorized representatives of Contractor can visit Supplier as well as its sub-suppliers at any time, in particular, in the case of objections of deliveries. Insofar as defects occur with deliveries, Supplier shall provide Contractor with all support which can be mustered for the prompt clarification and elimination thereof.

Contractor shall also be entitled to be present at all times through representatives during the quality controls of Supplier with a specialist employee and – insofar as necessary – to undertake certain random sample controls itself.

Supplier and its sub-suppliers shall grant Contractor's representatives access at all times to its quality recordings, its production process, its quality control, testing protocols and also to its production rooms. In this context, Contractor shall be granted unhindered access by Supplier to all desired information at any desired site of Supplier. These tests should lead to the conviction that Supplier is capable of delivering materials, parts and products in a defect-free and constant quality.

Results of the tests and, if appropriate, measures resulting there from shall be notified to Supplier without undue delay and discussed jointly.

## 11. Notification of Defects

11.1. Insofar as Contractor is obligated to make objections to defects, this shall occur, with apparent defects, at the latest 14 days after receipt of the goods. With delivery damage by which the defect can first be determined after processing by Contractor and/or installation with customers of Contractor, the objection to defects shall still be timely if it is made within one week after determination of the defect by Contractor or after receipt of the objection of defect of Contractor's customer.

11.2. Should a claim be made against Contractor by its customers due to a defect –in spite of failure to observe the regulation concerning the proper

objection –the objection to the defect shall still be timely if the objection of the defect by Contractor is made seven days after claim of the defect by Contractor's customer.

11.3. If a claim can be made against Contractor due to a defect which is based on the fact that Supplier and/or its assistants made incorrect statements concerning the quality of the goods to be delivered to Contractor's customer, the objection of defect shall be deemed to be timely made if Contractor objects to the defect to Supplier within seven days after notification of the defect by Contractor's customer.

11.4. Should, pursuant to the factual situations set forth pursuant to Items 11.1.to 11.4., a limitation of rights of Supplier exist pursuant to § 377 HGB, Supplier shall waive the defence of late objection to defects.

## 12. Liability / Statute of Limitations

12.1. Unless otherwise regulated in these General Contract Terms of Purchase, Supplier's liability shall be regulated pursuant to the statutory provisions. A preclusion of liability of Supplier, also due to slight negligence, is not possible. Otherwise, the statutory statute of limitation terms shall apply in addition; a reduction of the statute of limitation periods is, in each individual case, precluded.

12.2. Contractor shall be liable for wrongful intent / gross negligence. With slight negligence, Contractor shall be liable only for breach of material contractual obligations.

## 13. Product Liability

13.1. Should a claim be made against Contractor due to breach of public safety regulations or due to domestic/foreign product liability due to defects of products of Contractor which are caused by a defective delivery/goods of Supplier, Contractor shall be entitled to demand reimbursement of the damage from Supplier to the extent that it is the cause as within the scope of its control and organization and it is liable itself in the external relationship. In the case of having to take responsibility, Supplier shall reimburse Contractor furthermore the costs pursuant to its contributory negligence quota resulting from necessary, also as a matter of precaution, exchange/recall action pursuant to the circumstances.

13.2. To secure the risks mentioned in Item 13.1., Supplier shall conclude a reasonable group insurance for employees, product liability insurance/recall insurance with an insurance coverage of at least € 5.0 million per damaging event and to prove the existence of such to Contractor upon demand. Supplier shall assure that the coverage exclusion pursuant to § 4, 1, I AHB shall be waived, taking into account the outgoing goods controls (here Item 10) and the insurer grants unlimited coverage. Accruing costs/premiums resulting there from shall be borne by Supplier. Supplier's liability shall not be limited as a result of the conclusion of insurance contracts and the aforementioned coverage amounts.

13.3. Within the framework of its liability for cases of damage, Supplier shall also be obligated to reimburse any costs (§§ 683, 670 BGB as well as §§ 830, 840, 426 BGB) which result from and in connection with a recall action performed by Contractor.

## 14. Spare Parts Supply

Supplier shall be obligated to assure and continually maintain the supply of spare parts for the foreseen life span of the end products in which the delivery goods of Supplier shall be installed. The end products are mostly machines/driving systems/technical systems for which, according to experience, the expected life span is at least 20 years.

## 15. Miscellaneous (Place of Performance, Jurisdiction, Applicable Law)

15.1. Place of performance for deliveries/services (assignment) is the place to which the delivery goods are to be delivered in accordance with the contract; for payments, this shall be the registered office of Contractor.

15.2. Jurisdiction for all disputes arising from this contract relationship shall be the registered office of Contractor, currently Nürnberg. Contractor can, however, at its discretion chose to file a lawsuit against Supplier also at its (general) place of jurisdiction/registered office.

15.3. These General Contract Terms of Purchase shall be governed exclusively by the laws of the Federal Republic of Germany. The provisions of the uniform UN-Convention on Contracts for the International Sale of Goods (CISG) shall not apply and are herewith expressly precluded.

15.4. Should a provision in these General Contract Terms of Purchase be or become invalid, in whole or in part, such shall not affect the validity of all remaining provisions. The Parties shall be obligated to replace the invalid provision by a valid provision which in fact comes as close as possible in a legally valid manner to the commercial purpose of the invalid provision.

15.5. Contractor shall store/process for itself and its affiliated companies within the meaning of §§ 15 et seq. AktG all data concerning Supplier, with its express agreement, pursuant to the provisions of §§ 5, 33 BDSchG for its own purposes.

15.6. The contract language of the Parties is German. Should one of the contract Parties or the contract Parties use (also) another language, the German wording shall take precedence.