



## General Terms and Conditions of Purchase of the Baier GmbH

### 1. General

The following general terms and conditions of purchase apply to all orders placed by the company Baier GmbH (hereinafter referred to as "buyer"). Our suppliers accept these terms and conditions as binding by acknowledgement of the order or its execution. We expressly repudiate our suppliers' terms and conditions of delivery and business to the contrary and in conflict with our general terms and conditions of purchase. Any collateral agreements and amendments of the present terms and conditions and any deviations in the order confirmation shall only take legal effect if we have expressly confirmed them in writing. Orders placed verbally or by phone, as well as amendments and supplements, shall only become binding for the buyer if they have been acknowledged by subsequent confirmation. All letters, documents, invoices, etc. created in connection with orders placed by the buyer must include the buyer's complete order number. In case of delivery of imported goods, acknowledgements of order and invoices have to indicate the item weight and the customs tariff number. Suppliers are not permitted to pass the buyer's orders to third parties without the buyer's prior written consent.

### 2. Conclusion of the Contract

The supplier shall provide sales quotes at no charge. The supplier shall immediately, or at least within one week starting with the order date, reply to orders placed by the buyer by sending an acknowledgement of the order, which contains both prices and dates of delivery, via email or fax to the contact person mentioned in said order. If the supplier fails to respond within the time limit indicated above, the buyer shall have the right to cancel the order. The buyer shall confirm orders in writing, which then shall be deemed as accepted by the buyer.

### 3. Prices

Except where noted otherwise, the prices are quoted without value added tax, including packaging, delivered duty paid (DDP) according to Incoterms as amended, with destination works Bruck an der Mur, and as fixed prices. Subsequent changes in prices or the quantity ordered shall only be accepted if the buyer has expressly approved them in writing. The buyer reserves the right to put off price approval until after receipt of the acknowledgement of the order indicating the final price if the orders are submitted without a price or merely a target price being indicated.

### 4. Delivery

- 4.1. The delivery dates agreed shall always refer to the date of delivery to the delivery address; they shall be binding and must be strictly met. As soon as the supplier realises that timely delivery is not possible or is not fully possible they are to notify the buyer as to the reasons and the expected duration of the delay. In this case, the buyer – without prejudice to their statutory rights – is entitled to withdraw from the contract without granting a grace period. The supplier shall fully indemnify the buyer and hold them harmless against any disadvantages and claims resulting from a delivery delay.
- 4.2. Each delivery shall comprise a delivery note in duplicate indicating, in particular, the order number, the item number and the name of the article. The competent, skilful execution of the shipment forms part of the delivery process. Expenses arising from non-compliance shall be borne by the supplier.
- 4.3. Unless otherwise agreed, the requested delivery dates shall be observed exactly to the day. An unarranged bringing forward of the delivery date on the part of the supplier, not meeting the date desired by the buyer or non-compliance with the delivery date stated in the acknowledgement of the order is to be avoided. Unplanned overdelivery or underdelivery is to be avoided and entitles the buyer to reject the delivery.
- 4.4. Delayed delivery, unless one of the cases described in item 6 applies, entitles the buyer, further damage claims notwithstanding, to assert a contractual penalty amounting to 5% of the total order value for each commenced week of the delay, however not exceeding 15% of the total order value, without having to provide proof of the damage occurred or fault. The supplier shall bear any additional costs incurred by the buyer due to non-compliance on the part of the supplier.

### 5. Transfer of Risk / Place of Delivery

- 5.1. The transfer of benefits and risk for the goods ordered including the documentation shall take place after proper receipt of the goods at the place of performance at the earliest. If acceptance of the goods is required, the transfer shall take place afterwards.
- 5.2. Unless otherwise agreed in writing for a given case, the place of performance is to be the buyer's head office.

### 6. Force Majeure

If force majeure occurs, the contracting parties cannot be held responsible for any violation of their contractual duties. Force majeure shall include in particular labour conflicts and all events beyond the control of the party such as war, uprising, confiscation, embargo, lack of transportation means without fault, general shortage in supplies, restrictions on energy consumption, earthquake, fire, and other natural disasters.

## **7. Reception of Goods**

The confirmation of receipt of the delivered goods by the buyer constitutes an acknowledgement of the receipt of goods but not the acknowledgement of proper performance.

## **8. Warranty**

- 8.1. Material defects: The buyer reserves the right to choose from the following options if the goods do not satisfy the conditions agreed: improvement or supplementary delivery of what is missing, replacement of the goods, price reduction or return of the goods at the supplier's expense and rescission of the contract. In this case, the buyer contacts the supplier to find the most cost-effective measures in the case at hand to remedy the defect.
- 8.2. A letter to the supplier serves as documentation of the complaint. The supplier undertakes to reply to this letter within one working day. The buyer reserves the right to claim compensation from the supplier for damage the buyer may have suffered due to the delivery of defective goods.
- 8.3. Legal defects: The supplier assures that they have full title to all items subject to their delivery contract and that no third party rights, especially no third party industrial rights, are opposed to this.
- 8.4. The warranty period shall be 24 months. It shall commence with the proper reception at the buyer's production site or, concerning goods not immediately taken into operation or processed upon receipt, only after effective commissioning or the start of the processing, i.e. at the time when the defect becomes apparent. The supplier's warranty shall comprise parts manufactured by subcontractors. Payments carried out are not a waiver of notice of defects.

## **9. Conformity with CE Requirements**

For ordered ready-to-use products and/or machinery that are subject to mandatory CE marking, the documentation of the risk assessment, the declaration of conformity and the manual must be delivered by no later than the delivery of the ordered items. Partly completed machinery that has been ordered must fulfil the requirements pursuant to the annex to the Directive 2006/42/EC on Machinery of the European Parliament of 17 May 2006, as amended, insofar as the declaration of incorporation, the assembly instructions and the instructions for the machinery, as well as the necessary technical files for the machinery have to be included in the delivery. The supplier shall be liable for any direct or indirect damage incurred by the buyer due to non-compliance with the CE requirements. Moreover, the conformity of the delivery item, provided it is machinery, with the requirements of the Directive 2006/42/EC on Machinery of the European Parliament of 17 May 2006, as amended, not only constitutes the supplier's public obligation but also an essential requirement for the machinery, and, therefore, determines the "standard characteristics" of the machinery. The supplier agrees to submit the risk assessment upon the buyer's request.

## **10. Invoice and Payment**

- 10.1. The supplier always provides the buyer with a duplicate of a bill. The bills must show the buyer's order number. Invoices without an order number cannot be processed by the buyer and have to be returned to the issuer. A separate account shall be rendered for each order.
- 10.2. The term of payment shall not commence before receipt of a proper invoice. If the product is defective, the buyer has the right to retain payment until the defect is duly remedied. Payment does not signify acknowledgement of the propriety and completeness of the delivery. The supplier may accelerate the processing of invoices by cancelling the entire invoice and issuing a new, corrected invoice. Unless otherwise agreed in writing, payments, on the condition of proper delivery or performance, shall be made within 30 days after acknowledgement of the invoice with a 3% discount or 60 days after acknowledgement of the invoice without a discount.
- 10.3. The assignment of a claim of the buyer or the set-off against counterclaims requires the buyer's written consent.
- 10.4. If the buyer makes a deposit or advance payment for their orders, they are at any time entitled to demand an adequate security of the respective contract partner and/or supplier, which shall be provided in the form of a bank guarantee of an Austrian bank.

## **11. Liability**

If a claim is made against the buyer on the grounds of product liability due to defective delivery items, the supplier shall indemnify them against any third party claims to the extent that the buyer was held liable by said third parties to compensate for damage caused by fault of the supplier. In the event of a legal dispute, the supplier is obliged to support the buyer as effectively as possible and shall bear all costs arising from the refusal to render assistance.

## **12. Quality and Documentation**

- 12.1. The supplier is to implement their quality assurance measures in such a manner as the products ordered are provided with the set specifications, in the amounts agreed, at the time agreed, to the place agreed.
- 12.2. The supplier guarantees a high degree of independence and active participation in all phases of a project, with the aim of meeting all of the demands placed on the product, including all of the legal requirements, to achieve the highest quality objectives.

- 12.3 The supplier is obliged to plan, organise and realise the production process and quality assurance on their own responsibility in such a manner that comprehensive quality monitoring and quality control is guaranteed and that all of the quality and safety requirements placed on the product are maintained. This applies to all products, regardless of whether the supplier has produced them themselves, has processed them, has finished them or has received them, had them processed or finished by a third party.
- 12.4 Any products delivered by the supplier are to comply with the description agreed, in particular with regard to
- drawings included,
  - the buyer's test specification's (in certain cases),
  - miscellaneous standards and provisions
  - special features marked by the buyer
  - the samples agreed.

In each case, the supplier is to check immediately as to whether the buyer's instructions were faulty, unclear, incomplete or whether they deviated from the sample. Should the supplier recognise that this is the case, they are to notify the buyer immediately in writing.

- 12.5 The buyer is entitled to demand confirmation from the supplier in the form of an inspection document as proof of compliance with important features. Should the buyer demand an inspection document for individual parts, components, materials and/or features, these documents are to comply with the requirements given in DIN EN 10204 as amended. Basically, the inspection documents are to be archived by the supplier and to be provided to the buyer upon request. Documents are to be archived for a period of seven years. Depending on the customer requirements, this period may be extended as required. If necessary the supplier is to include the inspection documents with the goods delivered. The documents must always be able to be assigned to a certain delivery lot/batch.
- 12.6 The supplier is obliged to use only materials that meet all of the requirements in all of the applicable laws and security regulations, in particular those for hazardous materials, mixtures, products, as well as all of the nationally and internationally applicable technical standards.

### **13. Confidentiality**

The supplier, without being asked to do so, is to return any drawings, samples, models or other documents provided by the buyer after they have received the delivery item. The supplier undertakes to keep confidential all technical files provided by the buyer on the basis of the present contract and irrespective of the form (be they in writing or orally or in the form of drawings, photos or samples). They further undertake not to disclose this information to third parties and to use it only in connection within the scope of the contractual business relationship.

The confidentiality obligation also applies after the termination of the contract (for example after delivery of a delivery item).

### **14. Data Protection**

The buyer has the right to store, transfer, revise and delete personal information if this proves necessary in connection with the business relationship. The supplier has the right to revoke their consent in writing at any time.

### **15. Jurisdiction**

- 15.1. The place of jurisdiction for all disputes arising from and in connection with all relevant contracts including their conclusion shall be the buyer's head office. Further, the buyer has the right to appeal to the court having jurisdiction over the supplier. In addition, the contracting parties may agree, by mutual agreement, to submit the issue to arbitration.
- 15.2. The contract shall be governed by Austrian substantive law. The United Nations Convention on Contracts for the International Sale of Goods and the German Conflict of Law Rules shall not apply.

### **16. Severability Clause**

If a provision of these general terms and conditions of purchase is or becomes ineffective or unenforceable, the effectiveness or enforceability of the other provisions of the contract shall remain unaffected. The ineffective provision shall be replaced with an agreed effective provision which reflects its intention and purpose. The same applies to loopholes in these general terms and conditions of purchase. If necessary, ineffective provisions shall be agreed to have been amended up to the extent permitted by law (reduction of invalid provisions to preserve validity).

Baier GmbH

Tragösserstrasse 119/89

8600 Bruck/Mur, Austria