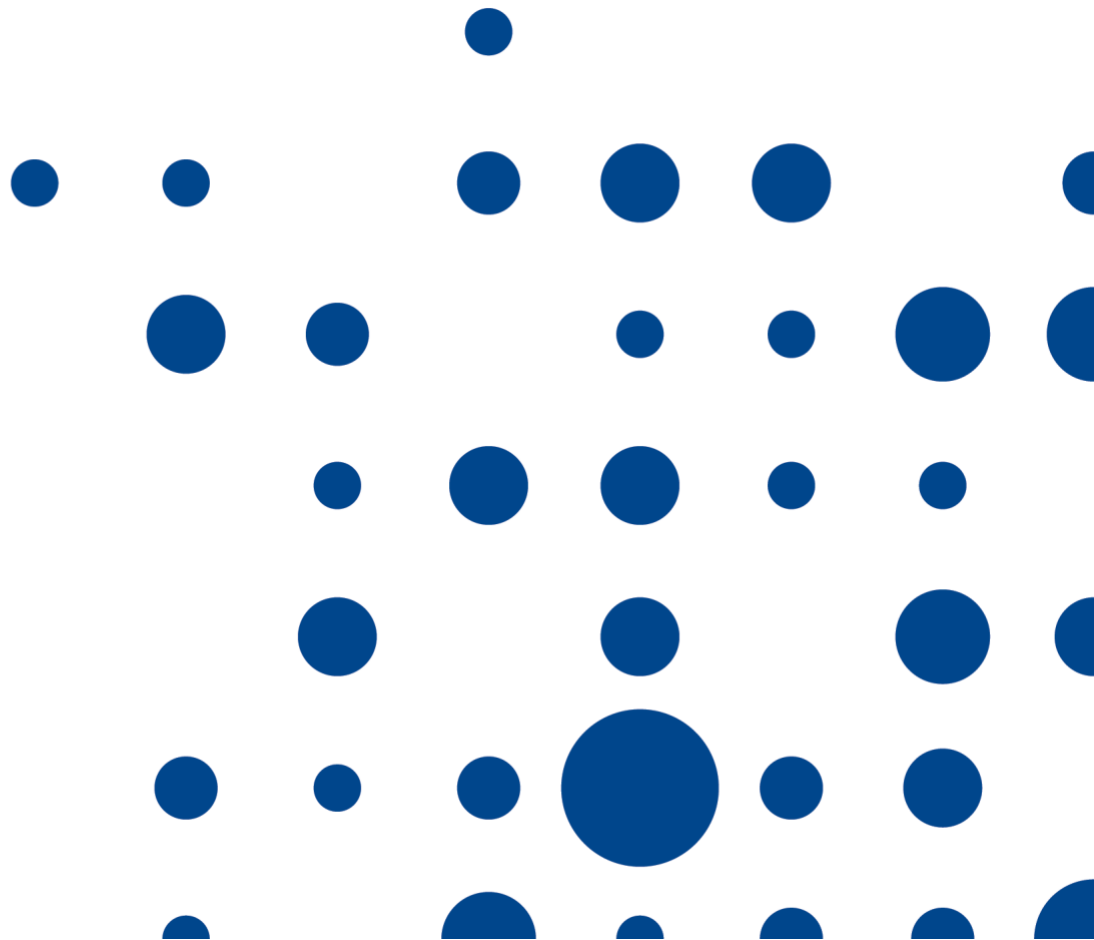




## General Terms and Conditions of Purchase (GTCP)

BMS Maschinenfabrik GmbH

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# General Terms and Conditions of Purchase

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## 1. Scope, form

- 1.1. These General Terms and Conditions of Purchase („GTCP“) apply to all business relationships with our business partners and suppliers ("Supplier"). The GTCP shall only apply if the Supplier is a trader (sec. 14 BGB (German Civil Code)), a legal entity under public law or a special fund under public law.
- 1.2. The GTCP apply in particular to contracts for the sale and/or delivery of movable things ("goods"), irrespective of whether the Supplier manufactures the goods itself or purchases them from suppliers (secs. 433, 650 BGB). Unless otherwise agreed, the GTCP in the version valid at the time of our order or, in any case, in the version last notified to the Supplier in text form shall also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case.
- 1.3. These GTCP shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Supplier shall only become part of the contract if and to the extent that we have expressly consented to their validity in writing. This requirement of consent shall apply in any case, for example even if the Supplier refers to its GTCP within the scope of the order confirmation and we do not expressly object to this.
- 1.4. Individual agreements (e.g. framework supply agreements, quality assurance agreements) and specifications in our order take precedence over the GTCP.
- 1.5. Legally relevant declarations and notifications by the Supplier with regard to the contract (e.g. setting of deadlines, reminders, withdrawal) must be made in writing. **Written form within the meaning of these GTCP includes written and text form (e.g. letter, e-mail, fax).** Legal formal requirements and further proof, in particular in the event of doubts about the legitimacy of the declarant, remain unaffected.
- 1.6. References to the applicability of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GPC.

## 2. Conclusion of contract

- 2.1. Our order shall be deemed binding at the earliest upon written submission or confirmation. The Supplier must point out obvious errors (e.g. spelling and calculation errors) and incompleteness of the order including the order documents to us for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not concluded.
- 2.2. The Supplier is required to confirm our order in writing within a period of three (3) days. The order confirmation shall be supplemented with all data relevant under customs law (country of origin, goods tariff number, individual weight, dual-use notice).
- 2.3. A delayed acceptance shall be deemed a new offer and requires acceptance by us.
- 2.4. We may - as long as the Supplier has not yet fulfilled his obligations in full - demand changes and/or extensions to the order with regard to design, execution, quantity or delivery time within the scope of reasonableness. In this context, the effects (e.g. additional or reduced costs) shall be settled by mutual agreement. Changes by the Supplier require our written confirmation to become effective.

### 3. Delivery time and delay in delivery

- 3.1. The delivery time stated in the order is binding. The Supplier is obliged to inform us immediately in writing if it is likely that the agreed delivery times cannot be met - for whatever reason.
- 3.2. If the Supplier fails to deliver, fails to deliver within the agreed delivery time or is in default, our rights - in particular to rescission and damages - are governed by the statutory provisions. The provisions in No. 3.3 shall remain unaffected.
- 3.3. If the Supplier is in default, we may - in addition to further statutory claims - demand lump-sum compensation for our damage caused by default in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the goods delivered late. We reserve the right to prove that higher damages have been incurred. The Supplier reserves the right to prove that no damage at all or only significantly less damage has been incurred.

### 4. Performance, delivery, transfer of risk, default of acceptance

- 4.1. The Supplier is not entitled to have the contractual services provided by third parties (e.g. subcontractors) without our prior written consent. The Supplier shall bear the procurement risk for the services provided, unless otherwise agreed in individual cases (e.g. limitation to stock).
- 4.2. Delivery shall be made "free domicile" within Germany to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, the delivery shall be made to our place of business in Pfatter, Germany. The respective place of destination shall also be the place of performance for the delivery and any cure (**debt to be discharged at creditor's domicile**).
- 4.3. The delivery must be accompanied by a delivery note stating the date (issue and dispatch), the content of the delivery (article number and quantity) and our order ID (date and number). If the delivery note is missing or incomplete, we are not responsible for any delays in processing and payment resulting therefrom. Separately from the delivery note, the Supplier is obliged to send us a corresponding dispatch note with the same content and additionally the place of delivery.
- 4.4. Delivery notes signed off by us (if applicable, also dispatch notes) shall be deemed merely as confirmation of receipt of the delivery, without acknowledgement of its freedom from defects, completeness or fulfilment of the contract.
- 4.5. The risk of accidental loss and accidental deterioration of the item shall pass to us upon handover at the place of performance. Insofar as an acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply accordingly in the event of acceptance. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- 4.6. Insofar as an EU safety data sheet or other data sheet is required for the materials, goods, etc. delivered by the Supplier due to statutory regulations, this must be handed over together with the order confirmation, in particular in the case of the delivery of hazardous substances. In this case, we must be provided with comprehensive product information together with safety data sheets. The same applies to information regarding any marketing restrictions required by law. In the event of changes to the product/goods,

the updated documents within the meaning of this no. 4.6 shall be sent to us without delay.

- 4.7. With regard to the services supplied, all environmental and safety regulations of the manufacturing and the recipient country must be complied with. The Supplier's compliance with all legal and safety-related requirements for restricted, toxic and hazardous substances is mandatory. The Supplier shall have the necessary permits for its processes and facilities and shall present them upon request.
- 4.8. Our default in acceptance shall be governed by the statutory provisions. However, the Supplier must also expressly offer us the contractual performance even if a specific or determinable calendar time has been agreed for an action or assistance on our part (e.g. provision of material). If we are in default of acceptance, the Supplier may demand compensation for the additional expenses in accordance with the statutory provisions (sec. 304 BGB). If the contract concerns a non-fungible item to be manufactured by the Supplier (individual production), the Supplier shall only be entitled to further rights if we have undertaken to assist with the manufacture and are responsible for the failure to do so.

## **5. Prices and terms of payment**

- 5.1. The price stated in the order is binding. All prices are exclusive of statutory value added tax, unless expressly stated otherwise.
- 5.2. Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance as well as customs duties and levies).
- 5.3. The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the Supplier shall grant us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment shall be deemed to have been made in due time if our transfer order is received by our bank before the expiry of the payment deadline; we shall not be responsible for any delays caused by the banks involved in the payment process.
- 5.4. The invoices must at least show our business reference, the order number, the order date, the order item and the description of the goods together with the quantity as well as the total price and the individual prices.
- 5.5. We do not owe interest as of the due date of the respective claims. Default in payment shall be governed by the statutory provisions
- 5.6. We shall be entitled to rights of set-off and retention as well as the defense of unperformed contract to the extent provided by law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims from incomplete or defective performance against the Supplier.
- 5.7. The Supplier shall only have a right of set-off or retention on the basis of counterclaims that have been legally established or are undisputed. This does not apply to counterclaims from the same contractual relationship.

## **6. Secrecy and retention of title**

- 6.1. We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and returned to us after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known. Special confidentiality agreements and statutory regulations on the protection of secrets shall remain unaffected.
- 6.2. The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Supplier for production. Such items - as long as they are not processed - shall be stored separately at the Supplier's expense and insured to a reasonable extent against destruction and loss.
- 6.3. Any processing, mixing or combination (further processing) of provided items by the Supplier shall be carried on our behalf. The same shall apply in the event of further processing of the goods supplied by us, so that we shall be deemed to be the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.
- 6.4. The transfer of ownership of the goods to us shall be unconditional and independent of the payment of the purchase price. If, however, in individual cases we accept an offer of transfer of title by the Supplier conditional upon payment of the purchase price, the Supplier's reservation of title shall expire at the latest upon payment of the purchase price for the goods delivered. We shall remain authorised to resell the goods in the ordinary course of business even before payment of the purchase price with advance assignment of the claim arising therefrom. All other forms of retention of title, in particular the expanded and extended retention of title are excluded.

## **7. Defective delivery**

- 7.1. The statutory provisions and, exclusively in our favour, the following supplements and clarifications shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery as well as improper assembly/installation or defective instructions) and in the event of other breaches of duty by the Supplier.
- 7.2. In accordance with the statutory provisions, the Supplier shall be liable in particular for ensuring that the goods have the agreed quality at the time of transfer of risk to us. The product descriptions which - in particular by designation or reference in our order - are part of the respective contract or have been included in the contract in the same way as these GTCP shall in any case be deemed to be a quality agreement. It makes no difference whether the product description originates from us, from the Supplier or from the manufacturer.
- 7.3. In the case of goods with digital elements or other digital content, the Supplier shall owe the provision and updating of the digital content in any case to the extent that this results from a quality agreement pursuant to No. 7.2. or other product descriptions of the manufacturer or on its behalf, in particular on the Internet, in advertising or on the goods label.

- 7.4. The Supplier guarantees that all services and goods comply with the latest state of the art, the relevant legal provisions, regulations and guidelines of legislatures, authorities, trade associations and professional associations on the day of delivery. This includes, in particular, compliance with the relevant provisions of the respectively applicable DIN and/or VDE standards as well as the other standards customary in the industry or EU standards together with accident prevention regulations. If in individual cases it is necessary to deviate from these regulations, the Supplier must obtain our written consent. The warranty obligation shall not be limited by such consent. If the Supplier has reservations about the type of execution desired, the Supplier must notify us thereof in writing without delay.
- 7.5. We are not obliged to inspect the goods or make special enquiries about any defects at the time of conclusion of the contract. Notwithstanding sec. 442 para. 1 sentence 2 BGB, we shall therefore also be entitled without restriction to claims based on defects if the defect remained unknown to us at the time of conclusion of the contract as a result of gross negligence.
- 7.6. The statutory provisions (secs. 377, 381 of the German Commercial Code (HGB)) shall apply to the commercial duty to inspect and give notice of defects with the following proviso: Our duty to inspect shall be limited to defects which become apparent during our incoming goods inspection under external appraisal including the delivery papers (e.g. transport damage, wrong delivery and short delivery) or which are recognisable during our quality control in the random sampling procedure. If acceptance has been agreed, there shall be no obligation to inspect. Otherwise, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding our duty to examine, our complaint (notice of defect) shall be deemed to have been made without delay and in good time if it is sent within five (5) working days of discovery or, in the case of obvious defects, of delivery.
- 7.7. Cure shall also include the removal of the defective goods and their re-installation, provided that the goods were installed in another item or attached to another item in accordance with their type and intended use before the defect became apparent; our statutory claim to reimbursement of corresponding expenses (removal and installation costs) shall remain unaffected. The expenses necessary for the purpose of inspection and cure, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, shall be borne by the Supplier even if it turns out that there was actually no defect. Our liability for damages in the event of an unjustified request to remedy a defect shall remain unaffected; in this respect, however, we shall only be liable if we recognised or were grossly negligent in not recognising that there was no defect.
- 7.8. Notwithstanding our statutory rights and the provisions in no. 7.6 the following shall apply: If the Supplier fails to meet its obligation to provide cure - at our discretion by remedying the defect or by delivering an item free of defects - within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement of the expenses required for this purpose or a corresponding advance payment from the Supplier. If cure by the Supplier has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline need be set; we shall inform the Supplier of such circumstances without delay, if possible in advance.
- 7.9. Otherwise, in the event of a material defect or defect of title, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## **8. Quality management, visiting rights and social responsibility**

- 8.1. The Supplier shall carry out quality assurance of a suitable type and scope and in accordance with the latest state of the art and shall provide evidence of this to us upon request. If we deem it necessary, the Supplier shall conclude a corresponding quality assurance agreement with us.
- 8.2. The Supplier shall grant us the right to visit its production facilities in order to carry out inspections with regard to the ordered goods, subject to prior notification in due time.
- 8.3. The Supplier undertakes to comply with the obligations under the German Act on Corporate Due Diligence for the Prevention of Human Rights Violations in Supply Chains (so-called Supply Chain Act) and to work within its sphere of influence for the observance of human rights and the promotion of sustainability in its supply chain.
- 8.4. The Supplier assumes social and economic responsibility for sustainable management and the security of the supply chain. The Supplier undertakes to comply with all statutory provisions on the protection of human rights, the relevant labour standards and the prohibition of discrimination as well as the prohibition of forced and child labour during the manufacture and delivery of products and the provision of services. Furthermore, the Supplier undertakes to observe the legal provisions of the Supply Chain Act and any further national or European provisions on the protection of the environment and human rights in the supply chain and to apply them in its supply chain.

## **9. Supplier recourse**

- 9.1. We shall be entitled to our legally determined claims for expenses and recourse within a supply chain (supplier recourse pursuant to secs. 478, 445a, 445b or secs. 445c, 327 para. 5, 327u BGB) without limitation in addition to the claims for defects. In particular, we are entitled to demand from the Supplier exactly the type of cure (repair or replacement delivery) that we owe our customer in the individual case; in the case of goods with digital elements or other digital content, this also applies with regard to the provision of necessary updates. Our statutory right of choice (sec. 439 para. 1 BGB) shall not be restricted hereby.
- 9.2. Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to secs. 445a para. 1, 439 paras. 2, 3, 6 sentence 2, 475 para. 4 BGB), we shall notify the Supplier and request a written statement, briefly explaining the facts. If a substantiated statement is not made within a reasonable period of time and if no mutual solution is reached, the actual defect claim granted by us shall be deemed to be owed to our customer. In this case, the Supplier shall be responsible for proving the contrary.
- 9.3. Our claims from supplier recourse shall also apply if the defective goods have been combined with another product or processed in any other way by us, our customer or a third party, e.g. by attachment or installation.

## **10. Producer liability**

- 10.1. If the Supplier is responsible for product damage, the Supplier shall indemnify us against claims by third parties to the extent that the cause lies within the Supplier's sphere of control and organisation and the Supplier itself is liable to third parties.
- 10.2. Within the scope of its indemnification obligation, the Supplier shall reimburse expenses pursuant to secs. 683, 670 BGB arising from or in connection with a claim by a third party including recall actions carried out by us. We shall inform the Supplier about the content and scope of recall measures - as far as possible and reasonable - and give the Supplier the opportunity to comment. Further legal claims remain unaffected.
- 10.3. The Supplier shall take out and maintain appropriate product liability insurance and present it to us upon request.

## **11. Statute of Limitation**

- 11.1. The mutual claims of the contracting parties shall come under the statute of limitations in accordance with the statutory provisions, unless otherwise stipulated below.
- 11.2. Notwithstanding sec. 438 para. 1 no. 3 BGB, the general limitation period for claims for defects shall be 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period shall begin with acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties for surrender of goods (sec. 438 para. 1 no. 1 BGB) shall remain unaffected; claims arising from defects of title shall furthermore not come under the statute of limitations in any case as long as the third party can still assert the right against us.
- 11.3. The limitation periods of the law on sales of goods including the above extension shall apply - to the extent provided by law - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (secs. 195, 199 BGB) shall apply, unless the limitation periods of the law on sales of goods leads to a longer limitation period in individual cases.

## **12. Choice of law and place of jurisdiction**

- 12.1. These GTCP and the contractual relationship between us and the Supplier shall be governed by the law of the Federal Republic of Germany excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- 12.2. If the Supplier is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Pfatter, Germany. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCP or a prior individual agreement or at the general place of jurisdiction of the Supplier. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

- GTCP August 2023 -