



General Terms and Conditions of Purchase of Brabender Technologie GmbH & Co. KG



Applicable in business transactions with business enterprises, legal entities under public law and special funds under public law.

1. General - Scope of application

- 1.1 These terms and conditions of purchase apply to all deliveries and performances that a seller, work contractor or party obliged to render a service (hereinafter collectively referred to as "supplier") provides for us.
- 1.2 Our terms and conditions of purchase apply exclusively; we do not recognise contradictory conditions, or conditions from the supplier that differ from our conditions of purchase, unless we have expressly agreed to their validity in writing. Our terms and conditions of purchase also apply if we accept without reservation or pay for deliveries of the supplier in the knowledge of conflicting supplier terms and conditions or supplier terms and conditions differing from our terms and conditions of purchase.
- 1.3 Our conditions of purchase also apply for all future transactions with the supplier.
- 1.4 Individual agreements made with the supplier in the particular case (including side agreements, supplements and changes) have precedence over these terms and conditions of purchase. A written contract or our written confirmation is decisive for the content of such agreements.
- 1.5 Legally relevant declarations and notifications, which are to be submitted towards us by the supplier after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declarations on rescission), require the written form in order to be valid.

2. Conclusion and Amendment of the Contract

- 2.1 An order shall come into effect by our written order (especially by telefax or data transmission) as well as the acceptance of an order by the supplier. If the supplier fails to accept the order within five working days, we are entitled to revoke the order. Delivery requests shall be binding unless the supplier raises an objection within five working days after receipt of same.
- 2.2 Cost estimates shall be binding and shall not be compensated, unless otherwise expressly agreed in writing.
- 2.3 If the order covers machinery, the requirements stipulated by the relevant EU directives according to the enclosed "conditions concerning execution of machines according to the EU directives" are an essential part of the contract.
- 2.4 The supplier shall be obliged to introduce and maintain a Quality Management System based on ISO 9000 ff. The supplier shall allow us to ascertain by means of audits his quality assurance measures and he shall provide at our first request all the necessary information and documents and to accept on-the-spot inspections. The conduct of such audits shall not result in the sole responsibility of the supplier with regard to the quality of the products produced and delivered being in any way impaired.
- 2.5 We are at any time entitled to change the time and place of delivery and the type of packaging in writing within a period of at least five working days before the agreed delivery appointment. The same applies to changes of product specifications as far as these can be implemented with normal production processes of the supplier without any increased additional expense, whereby the notice period relating to the afore-mentioned part is at least five working days. We will refund the supplier with any proven and appropriate additional costs incurred due to the change. If such changes result in delayed deliveries which could not have been avoided even if all reasonable measures within the supplier's normal production and business activity had been taken, the original delivery date shall be extended accordingly. The supplier shall notify us in writing of the expected additional costs or delays in delivery before the delivery date, at least two working days upon receipt of our notification in accordance with sentence 1.

3. Delivery

- 3.1 Deliveries deviating from the specifications agreed upon in our contracts and orders require our prior written approval.
- 3.2 Agreed dates and periods are binding. Decisive for deadline adherence of the delivery date or deadline shall be receipt of the goods by us. If delivery other than "free factory" (DDP as per Incoterms 2010) is agreed the supplier must make the goods available in good time, taking into consideration the time required for loading and shipment, as agreed with the forwarding agent.
- 3.3 If the supplier has agreed to carry out the installation or assembly, or in the absence of any agreement stating otherwise, the supplier shall bear all necessary expenses, such as travel expenses or tooling charges and accommodation allowances, unless otherwise agreed.
- 3.4 If agreed deadlines are not upheld, the legal regulations apply. If the supplier foresees difficulties with regard to manufacturing, supply of input materials, compliance with the delivery deadline or similar circumstances that could prevent the supplier from delivering on time or in the contracted quality, then the supplier shall immediately notify the department of our company that placed the purchase order. As a result of this notification, however, the supplier is not released from his responsibilities.
- 3.5 If the supplier exceeds the agreed delivery deadline, he is obliged to pay a penalty. This shall amount to 0.3% of the order amount per working day that the delay lasts up to a maximum however of 5% of the total net order

amount. We are entitled to claim the penalty up until the time of final payment even if we do not expressly reserve the right to do so when accepting the delayed delivery. This agreement pertaining to the contractual penalty or enforcement thereof shall not affect any justified legal claims for a delay in delivery.

- 3.6 The unreserved acceptance of the delayed supplies/services may not be construed as relinquishment of any compensation to which we are entitled; this shall apply until we have fully paid the amount we owe for the delivery or service in question.
- 3.7 Partial deliveries may only be made with our prior written approval.
- 3.8 Unless evidence to the contrary is presented, the quantities, measures and weights ascertained by our incoming goods inspection are decisive.
- 3.9 In addition to the right to use software, including its documentation, to the extent permitted by law (§§ 69 a ff. of German Copyright Act) we have the right to use software which belongs to the scope of delivery with the agreed performance characteristics and to the extent necessary for use of the product in accordance with the contract. We shall be authorized to create a backup copy without any express agreement.

4. Force Majeure

- 4.1 If the failure to comply with the delivery or acceptance by us is due to Force Majeure, labour disputes or other events beyond our control, we are entitled to extend the delivery deadline of a part delivery or all of the delivery correspondingly without the supplier being able to derive any claims from this against us. However, in case of an extension of over one month, we are entitled to withdraw from the contract. In this case, too, the supplier is not entitled to make other claims against us.

5. Delivery Note and Invoice

The information in our orders and delivery schedules shall apply. The invoice is to be submitted in duplicate giving the invoice number and other filing references to the address indicated in each case. The invoice may not be enclosed with the shipments. Should one or more of these details be missing and processing is delayed by us in our normal business operations, the payment periods mentioned in paragraph 7 are extended by the period of the delay.

6. Pricing and Transfer of Risk

In the absence of any other written agreement, the price includes delivery "free house" (DDP according to Incoterms 2010) including packing. The supplier shall take back packaging material if requested to do so. Unless otherwise agreed in writing in the individual case, the price shall include all services and ancillary services of the supplier (e.g. assembly, installation) as well as all additional charges (e.g. transport costs including transport and liability insurance). The supplier shall bear the risk of material damage until the goods are accepted by us or the person authorised by us at the place to which the goods are to be supplied according to the order.

7. Term of Payment

To the extent that no other agreement has been made settlement of the invoice shall occur either within 14 days after receipt of the invoice with a deduction of 3 % of the net price or within 30 days net cash without deduction from the date when the payment claim becomes due and receipt of both the invoice and the goods or rendering of the service. Payments shall be effected subject to a check of the invoices. The receipt of the transfer order at our bank will be sufficient for the payment to be seen as punctual.

8. Protective Clause

- 8.1 The supplier is responsible for ensuring that in connection with its delivery no third-party rights shall be infringed.
- 8.2 If a third party brings infringement claims against us that are attributable to the supplier, the supplier must on first demand hold us harmless from such claims. This does not apply, insofar as the supplier is not responsible for the infringement of third-party rights. In the case of indemnification, we shall not enter into any agreements with the third party - without the supplier's prior consent - in particular not to enter into any settlement.
- 8.3 The supplier's duty to indemnify shall apply to all expenses which we necessarily incur through or in connection with the claims asserted by a third party.

9. Liability for Defects

- 9.1 As far as applicable, for the commercial duty to inspect and to give notice of defects, the statutory provisions (§§ 377 HGB (German Commercial Code)) apply with the following provisions: Our duty to inspect is limited to obvious defects which are revealed at the incoming goods inspection (e.g. transport damage, wrong delivery and short delivery). No inspection is required if an acceptance procedure has been agreed on. For the rest, it depends to what extent an inspection taking into account the circumstances of the individual case is feasible according to the proper course of business. Our obligation to give notice of defects discovered at a later point in time remains unaffected. In all cases our objection (notification of defects) shall be deemed timely and without delay if it is delivered within ten working days of discovery of the defect.

- 9.2 We shall be unreservedly entitled to the legally mandated defect claims. Irrespective hereof, we are entitled to requiring, according to our choice, rectification of defects or replacement delivery from the supplier. In this event the supplier is required to bear all expenses required in order to eliminate the defects or provide a replacement delivery. The right to claim damages, particularly for damages instead of compensation for non-performance is expressly reserved.
- 9.3 The statutory limit for claims in respect of a defect is 36 months, calculated from the time of transfer of risk.
- 9.4 In the case of defects in title, the supplier shall additionally indemnify us against any third-party claims. The period of limitation with regard to legal defects shall be 36 months.
- 9.5 Upon receipt by the supplier of our written defect notification, the statutory limitation of guarantee claims is inhibited. In case of replacement delivery or removal of defects the defects liability period for replaced and mended parts begins again unless we had to assume from the behaviour of the supplier that he did not feel committed to this action but carried out the replacement delivery and removal of defects as a gesture of goodwill or similar reasons.9.6 If, as a result of the faulty delivery of the object of the contract, we incur expenses, in particular transport, infrastructure, labour, material costs or expenses for an incoming inspection exceeding the customary extent, these expenses shall be borne by the supplier.
- 9.7 We are entitled to demand compensation from the supplier for expenses which we had to bear in relation to our customer, because the latter has made a claim against us for reimbursement of the expenses required for the purpose of subsequent performance, in particular, transport, infrastructure, labour and material costs.

10. Product Liability - Indemnification - Liability Insurance Protection

- 10.1 If the supplier is responsible for product damage, he is obliged to indemnify us from claims for damages filed by third parties upon our first request if the cause stems from an area under its dominion or organisation and if the supplier is liable externally.
- 10.2 As part of his liability for cases of damage in the sense of paragraph 10.1 the supplier is also obligated, to reimburse any expenses that result in or out of connection with any recall action that we carry out. Where possible and within reason, we will co-ordinate the content and scope of the recall measures to be implemented with the supplier and give the latter the opportunity to comment on the same. Other legal claims will remain unaffected.
- 10.3 The supplier undertakes to maintain product liability insurance with a reasonable cover amount at least EUR 3 million per personal damage / damage to property; if we are entitled to further compensation claims, these remain unaffected.

11. Execution of Works

- 11.1 The supplier's personnel delegated to one of our factories or to the factories of our final customers for the execution of works on our express request or with our prior written consent must observe the rules of the house and of the affected plant as well as the applicable safety regulations during the fulfilment of their activities. The contractor's manager responsible for the execution of the works is obliged to gain sufficient knowledge of these regulations before commencing work. The supplier or his responsible manager is obliged to instruct his personnel accordingly and to document this instruction.
- 11.2 The supplier commits himself to ensure that he and his personnel meet all regulations and rules with regard to execution, work security and environment protection enacted by the legislator, the supervisory authorities and the profession associations. The supplier must make his employees regularly aware of relevant regulations and guidelines, he must instruct his employees accordingly and document this instruction accordingly.

12. Provision

- 12.1 If an object provided by us is inseparably combined with other objects that are not our property, we shall acquire co-ownership rights in the new product according to the ratio of the material provided by us (purchase price plus value added tax) to the other mixed goods at the time of mixing. If the mixing takes place in such a manner that the item of the supplier is to be regarded as the main item, then it is deemed to be agreed that the supplier transfers co-ownership on a pro rata basis to us; the supplier shall preserve for us the sole or joint ownership.
- 12.2 Tools, devices and models that we put at the disposal of the supplier or that are manufactured for contractual use and are invoiced separately to us by the supplier remain our property or are passed on to our property. They are to be recognizably designated as our property by the supplier, carefully maintained, insured against all types of damages and used only for contractual purposes. Following request, the supplier shall be obliged to hand over said items to us in an orderly condition; the supplier shall have no retention right.

13. Documentation and Secrecy

- 13.1 All commercial or technical information (including features found in the delivered items, documents or software, and any other knowledge or experiences) made accessible by us, must, insofar as it has not demonstrably been made public, not be disclosed to third parties, any may only be provided, at the supplier's own factory, to people

who have to become involved with us to use it for the purposes of the delivery, and who are also bound to non-disclosure; the information remains our exclusive property. Without our prior written consent, such information must not be duplicated or exploited commercially - except for deliveries to us. Upon our request, all information originating from us (including any copies or records made) and any objects on loan to the supplier from us shall be returned to us immediately and completely or destroyed. The supplier's obligation to maintain confidentiality pursuant to the provisions of this shall apply for a period of five years following termination of this contract.

- 13.2 We reserve all rights to such information (including copyright and the right to use industrial property rights, such as patents, industrial designs, etc.). If these are provided to us by third parties, this reservation of right also applies for the benefit of these third parties.
- 13.3 Products manufactured in accordance with drawings, models and the like drawn up by us or on our confidential information or manufactured with our tools or with tools modelled on our tools may not be used by the supplier nor offered or supplied to third parties. The same also applies to our print jobs.

14. Assignment, Offsetting, Retention

- 14.1 The supplier is not entitled to relinquish his claims from this contractual relationship to third parties. This does not apply if it regards monetary claims. 14.2 The supplier shall only have a right of offset or retention in the event of res judicata or undisputed counterclaims.

15. Spare Parts

- 15.1 The supplier is obliged to keep spare parts for the products delivered to us for a period of at least ten years after delivery.
- 15.2 If the supplier intends to stop the production of spare parts for the products delivered to us, he must inform us immediately after making the decision. This decision shall be taken at least six months before the production is discontinued - subject to the provision of paragraph 15.1 above.

16. Place of Performance

- 16.1 The place of performance in respect of deliveries and the other claims that may arise from or in connection with the contract shall be the place of performance nominated by us, for payment is the registered address of our business.

17. General Provisions

- 17.1 If some particular paragraphs of these dispositions or parts of these paragraphs should be declared null and void, this will not effect the remaining dispositions. Instead of the invalid provision the provision provided by law shall apply or (in lack of such a provision) a provision shall be deemed to have been agreed upon by the parties in good faith and in accordance with the legal provisions, if they had been aware of the invalidity of the provision.
- 17.2 If the supplier is a businessman, a legal person of public law or a responsible body of public-legal special assets the court of jurisdiction is the court competent for our place of business. However, we may depending on our choice also raise court action at the place of fulfilment for the delivery commitment or at the company seat of our supplier.
- 17.3 The only law that shall apply to the contractual relationships shall be the law of the Federal Republic of Germany, under exclusion of the law of conflicts and the UN Convention on Contracts of the International Sale of Goods (CISG).