Purchase conditions

BS SYSTEMS

A joint company of Bosch and Sortimo

1. Validity

1.1 These general purchase conditions (following: GPC) are valid for all contracts, and also for ancillary services, consultations and information which we -BS SYSTEMS- conclude and for those wherein we are contract partners at the side of purchas-ers/customers..

1.2 For all contracts concluded by us on the purchaser/customer side, and also for ancillary services, consultations and information, these GPCs are exclusively valid. With the order confirmation of the seller/supplier/contractor (following: contractor or supplier) our GPCs are taken as recognised and as component of the contract. Contradictory or diverging conditions from the contractor are hereby rejected. They shall only become an integral part of the contract if we expressly approve them in a particular case. Our GPCs are also valid if, notwithstanding our knowledge of terms and conditions of the contractor opposing or deviating from our terms and conditions, the delivery or performance is accepted unconditionally.

1.3 Our GPCs only apply to business persons (§ 14 BGB (German Civil Code)), to legal persons as defined by public or private law or special funds under public law in the sense of § 310 Para. 1 sentence 1BGB.(German Civil Code).

1.4 Our GPCs apply also to all future similar contracts with the contractor, in which we are contract partners on the purchaser/customers side.

1.5 All agreements between us and the contractor as well as any additions and amendments to these agreements require the written form. This also applies to any waiver of the written form requirement.

1.6 Individual agreements concluded in specific cases with the supplier (including collateral agreements, additions and amendments) shall in all cases have precedence over these GTCs. For the contents of any such agreements, in the absence of proof to the contrary, a written contractual form or resp. our writ-ten confirmation is decisive.

1.7 Legally relevant declarations and notifications of the contractor in relation to the contract (e.g. deadlines, reminders, cancellations) are to be submitted in written form i.e. written or text form (e.g. email, fax). Statutory form requirements and further proof in particular regarding doubts about the legitimacy of the declarant remain unaffected.

1.8 References to the validity of statutory regulations shall only have clarifying significance. Even without such clarification the statutory regulations shall also apply, insofar as they are not directly amended or expressly excluded from these Conditions.

2. Cost estimate, order, commission, order confirmation

2.1 Cost estimates are binding for the supplier and must be compensated by us.

2.2 Our orders and commissions must be promptly confirmed/accepted by the supplier in written form, at latest two weeks after receipt. A delayed acceptance shall be deemed as a new offer and requires written acceptance from us. Verbal orders or commissions require our written confirmation before they be-come valid.

2.3 The supplier shall include our order/commission number on all order confirmations as well as all written correspondence

3. Prices, Terms of payment

3.1 The prices agreed with the supplier are fixed prices and include delivery, packaging, transport, toll and insurance costs as well as import and export duties. Additional charges of any kind will be recognised by us only after express written confirmation resp. express written amendment to the order.

3.2 We reserve the right to benefit from general price reductions from the supplier (e.g. in the case of list price reductions) also without written confirmation.

3.3 In the absence of instructions to the contrary, VAT, insofar as it is applicable, is included in the price.

3.4 We pay, insofar as nothing contrary has been agreed in writing, within a period of 30 days or within a period of 14 days with 3% cash discount on the net price. The term of payment commences from the point when both the invoice as well as the delivery have been received by us, resp. all performances have been fulfilled by the supplier; in the case that installations, assemblies or other such works services belong to the scope of the contract, the following applies instead of para. 10.3. The payment will be made subject to the incoming goods inspection and invoice control. An acceptance or rejection of the delivery is not linked to our payment.

3.5 We are entitled to choose the means of payment in our discretion. In the case of a bank transfer, payments shall be considered made when our bank has received our bank transfer before the expiration of the period of payment; we assume no responsibility for delays incurred by the payment process be-tween the relevant banks.

3.6 We will not be obliged to pay default interest. In case of delay of payment we are obliged to pay interest on arrears to an amount of five percentage points above the basic rate of interest acc. to § 247 BGB.

3.7 Assignments of claim or direct debit authorisations require our express agreement.

4. Set-offs and retention

The supplier shall only have rights of set-off or retention if their counterclaims have been deemed legally binding or are undisputed.

5. Delivery, Deadlines, Delivery dates, Delay, Sub-suppliers, Sub-contractors

5.1 The supplier is legally bound to adhere to all delivery dates, including interim and individual dates. Delivery dates are deemed to have been adhered to, when the delivery is available at the agreed location on the agreed date. The place of fulfilment for the delivery is the respectively agreed location for the delivery and for any possible rectifications (Obligation). When the supplier recognises or should have recognised that the deadline is threatened, then the supplier must inform us immediately in written form and also indicating the new expected date of delivery. The statutory rights to which we are entitled be-cause of late delivery remain unaffected even in the case where we have agreed a new delivery date, exclusively in writing. Paragraph 5.1 applies accord-ingly for deadlines, which have been agreed with the contractor for delivery, also for interim and single deliveries.

5.2 In case of delays from the contractor's side we are entitled to rights – in particular for withdrawal and damage compensation – in accordance with statutory regulations. Additional costs, in particular for necessary cover purchases, are borne by the contractor. If the contractor is in delay then he is particularly obliged to use express delivery options (Express dispatch, Express couriers, Express parcel, Air freight, etc.) and bear the costs incurred. The uncondition-al acceptance of the delayed delivery does not imply a waiver of our statutory rights.

5.3 Should the contractor come into delay with the delivery, a flat rate compensation for delay shall be paid to us for each commenced week of delay to an amount of 0.5 %, however totalling not more than 5 % of the net contract price, unless the contractor proves that no or very limited damages were in-curred. In any case we are entitled to demand compensation for damages actually suffered.

5.4 In cases where the delivery is no longer utilisable by us from an economical point of view on account of Force Majeure (e.g. war, natural disasters, fire, flooding, explosions, earthquakes, unrest, official actions, strikes and other unavoidable events, for which neither party is responsible) and we have therefore no further interest in the delivery, then we are entitled to entirely or partly withdraw from the contract (notwithstanding our other rights).

5.5 Partial deliveries, short deliveries, excess deliveries or advance deliveries are inadmissible, unless we have expressly agreed these with you in advance.

5.6 The contractor is to effect the performance in person. Performance by third parties (Sub suppliers/sub contractors), require our advance written agreement.

5.7 The contractor is obliged only to use employees and third parties in accordance with paragraph 5.6 within the framework of this contract for whom all social contributions, registrations and notification requirements have been fulfilled properly and in due time. Any offence against this obligation shall en-title us to extraordinary termination of the contract without notice.

6. Delivery, Packaging, Assumption of risk

6.1 Insofar as nothing has been agreed otherwise, the delivery is undertaken at the risk of the contractor, carriage free to the location listed on the order.

6.2 Should it be the case that, as a result of a written agreement the delivery should be provided "ex works" and the contractor arranges the delivery, then the delivery must be carried out at the most economical rate (including transport insurance).

6.3 The contractor is liable for the correct declaration of the freight.

6.4 The contractors shall take back all packaging at their own costs. The place of performance for the fulfilment of the contractor's obligations regarding the take back obligation according to § 4 of the packaging ordinance is the place of delivery (Paragraph 14.2).

7. Transfer of ownership

7.1 The ownership of the goods passes to us with delivery to the place of delivery. Any extended right of retention declared against us requires our written agreement to become valid.

7.2 If we make available materials, parts, tools, components etc. for the completion of the delivery, these remain in our ownership.

7.3 The contractor is obliged to insure at their own cost any property of ours made available for completion of the delivery object in the sense of paragraph 7.2, in the frame of their business liability insurance or through additional individual liability insurances at reinstatement value against all possible damages or destruction. The contractor is obliged to give evidence of such insurances to us on demand, without delay, in particular by presenting the insurance policy and other relevant insurance documents. Already with conclusion of the contract, the contractor should transfer their claims against the civil liability insurance provider from their insurance of our property in the sense of Para 7.2, as a precaution.

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8. Quality, Documentation, Goods in and out inspections

8.1 The delivery from the contractor must comply with the descriptive documents in the contract regarding the agreed design, quality, colour, amount and our technical requirements as well as (subordinate) their own technical specifications; the contractor is also obliged to document the adherence to said crite-ria and to submit said documentation to us with the delivery. The contractor guarantees the compliance with the relevant valid statutory regulations regarding delivery resp. acceptance, the accident protection regulations, the laws affecting technical devices, (Machine protection act), the relevant regulations and guidelines, the VDE guidelines, as well as the latest recognised rules of technology at the time of delivery resp. acceptance.

8.2 The contractor is obliged to comply with the relevant quality controls/goods out controls, of a suitable nature and scope , meeting state of the art require-ments.

8.3 The commercial duty to examine and notify defects shall be governed by the statutory provisions (§§ 377, 381 HGB) save that the duty to examine is limited to defects which are obvious under visual inspection of the incoming goods, including the delivery documents and are perceptible and evident (e.g. transport damage, incorrect or short deliveries) or become evident during spot checks as part of our quality control. No examination 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 cases, 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. Without prejudice to our inspection obligation, our complaint (notice of defect) shall be considered as timely in any case when we submit it within five working days from the point of discovery resp. in the case of obvious defects, from the time of delivery.

8.4 The contractor shall continually base their products, which will be delivered to us, on the latest technology at the time of delivery resp. acceptance and to point out possible improvements as well as technical optimisations.

8.5 Possible modifications to the deliverable may only be carried out after receipt of our express written agreement.

8.6 The contractor is obliged to provide us with access to their places of business as well as to all documents, which are relevant to the order under consid-eration, when appropriate notice has been given, and during normal business hours. All important documentation relevant to the order which is not trans-ferred to us must be archived for a period of ten years from the delivery/acceptance. The contractor shall ensure that we obtain the same rights from any sub supplier or subcontractor of the contractor.

8.7 All documentation (e.g. operation and maintenance instructions, calibration and testing certificates, plans etc.), which must be submitted to us or made available to us according to the contract, must be in German. The costs for translations agreed for other languages are to be borne by the contractor. The contractor is liable for the correct translation.

9. Production records and data

9.1 The production documentation, films, models, standard specification sheets, tools, jigs, samples and sundry objects which have been furnished to the contractor, including documentation (following referred to as PD), remain our property and are entrusted to the contractor exclusively for the execution of the contract. The contractor shall treat the PD with the utmost care, label it as our property and store separately. The PD shall be returned to us upon re-quest, when they are no longer requisite to the contractor's usual business procedures, and at latest upon completion of the contractual services: any copies of our PD, also in electronic form, are to be destroyed by the contractor at latest when the PD is returned. The assertion of right of retention to the PD or withholding performance is thereby precluded, unless the counterclaims of the contractor have been legally recognised or are undisputed.

9.2 Products manufactured with PD, which belongs to or has been financed by us, may only be supplied to us. The contractor is not entitled to use our PD directly or indirectly as documentation for performances for third parties.

9.3 The contractor is not permitted to reproduce nor hand over to third parties for inspection or to allow access or make available in any way the PD furnished to them. The contractor is liable for damages to or loss of the furnished PD.

9.4 In the case that the PD has been utilised without authorisation by the contractor or third parties, and the contractor is deemed responsible then the con-tractor shall pay a contractual penalty to the amount of the net sales price of the products manufactured according to the PD, unless the contractor can prove that we have suffered no or very limited damages. We are at any rate entitled to demand, at all times, compensation for damages actually suffered.

9.5 The processing, co-mingling or combination resp. alteration of the PD by the contractor will be undertaken for us. The contractor shall keep the new or altered object in safekeeping for us, free of charge, with the attention of a prudent businessman. Reservation of the contractor's property rights shall only apply, insofar as they are relevant for our obligation of payment from us for the respective products for which the contractor reserves ownership. Inparticular, extended or prolonged reservation of property rights is not permitted.

9.6 We retain sole ownership of transmitted data. The contractor shall receive for the purposes of fulfilling the contract, a non-exclusive and limited, non-transferable right of use. Insofar as the contractor changes, supplements or processes, in one way or another, furnished data in the course of performance of the contract, then this processing, supplementation and changing is carried out on our account. The contractor is obliged to protect the data furnished to them, including the amended, supplemented or processed data from any access which has not been expressly authorised by us and to pro-vide evidence to us of such measures undertaken, on demand. If the contractor should be provided with access to our system networks during the course of fulfilment of the contract, or indeed the networks of our customers, then the contractor is obliged to use exclusively their own or the personal IDs pro-vided by us in written form as well as to carry out the transfer and processing of data according to our guidelines.

10. Works services

10.1 Should installation, assembly or sundry works services (following: works services) be included in the scope of the contract for the contractor then the following provisions Para. 10.2 to 10.6 shall apply additionally.

10.2 A formal acceptance procedure is agreed. The formal acceptance can only occur after a successfully concluded test phase. A notional or conclusive acceptance, in particular through operationalization, is precluded.

10.3 The terms of payment shall deviate from Para. 3.4 sentence 2 only from the date when the acceptance takes place and we have received a testable invoice from the contractor.

10.4 We can make contractual penalty claims against the contractor up to the time of final payment, even if this has not been reserved at the time of acceptance.

10.5 The passing of risk can only take place after acceptance.

10.6 In accordance with Para. 10.6 the contractor is obliged to provide contract performance securities and security for the warranty period.
Up to the time of acceptance we are entitled to withhold 10% of the net amount of the order for the works services (contract performance securities) to ensure the fulfilment of all obligations of the contractor (in particular: contractual execution of the works services, claim for defects before acceptance, all damages and contractual penalty claims as well as the reimbursement for overpayments including interest). The contract performance securities shall be returned step by step against the agreed security for the warranty period.
As security for the contractual fulfilment of all claims for defects (also with respect to modified or additional services) as well as all compensation for dam-ages and contractual penalties and the reimbursement of overpayments including interest, we shall withhold 5 % of the net invoicing sum for the works services. (Security for the warranty period). The security for the warranty period must only be returned after the expiry of the period of limitation for the claims for defects with regards to the works services of the contractor. The contractor can replace our retentions according to Para. 10.6 sections 2 and 3 through payment of securities (§§ 232 ff BGB) to an amount of the respective retention. When securities are provided through provision of a bank guaran-tee, then this guarantee must be unlimited, absolute, under the condition of waived defence of void-ability as well as without authorisation to deposit. Fur-thermore the guarantee must include a waiver of the defence of set off, insofar as the counter claims, which should be reckoned up, have not been declared legally valid or are undisputed. The guarantee must also contain the declaration that our claims against the guarantor do not lapse before our se-cured claims against the contractor through the guarantee. Furthermore the guarantee contract must include a waiver of the statute of limitations defence, insofar as our secured claims against the contractor may be enforced in unlimited time against contractor or guarantor. Only credit institutions or credit in-surers who are registered in the European community are accepted as guarantors. The securities, according to Para. 10.6 section 2 to section 4 also se-cure lapsed claims, when the underlying defect based on a non-statute barred time has been submitted to the contractor.

11. Claim for defects, liability, limitation period, product liability, liability insurance

11.1 Our claims for defects and the liability of the contractor, also regarding delays, are subject to the applicable legal regulations.

11.2 The contractor guarantees that the deliveries comply with the description of qualitative and dimensional characteristics set out in the contract as well as possessing complete functionality and suitability for the intended use. In cases of doubt the contractor must inform themselves about the intended use or nature of the subsequent process.
Unless evidence to the contrary is presented, the quantities, measures and weights ascertained by our incoming goods inspection are decisive. Even small deviations from our order are to be seen as deficits. Goods-in confirmations and payments do not constitute approval of the delivery.

11.3 We shall generally have the right to select the type of subsequent improvement. This also applies when works services are included in the scope of the contract. The contractor shall have the right to refuse the type of subsequent improvement selected by us under the preconditions of § 439 section. 3 BGB (German Civil Code). Defective deliveries may be returned at the cost of the contractor.

11.4 We are entitled, without prejudice to our statutory claims for defects, in cases where the subsequent improvement is unacceptable to us (e.g. because of particular urgency, risk to operational safety, or impending occurrence of disproportionate damage) to realise the subsequent improvement in what-every way we consider fit at the expense of the contractor in lieu of specific performance.

11.5 Included in subsequent improvement shall be the disassembly of the defective goods and the reassembly, insofar as the goods are assembled into another object according to their intended use. The outlaid costs for the purposes of testing and subsequent improvement by the contractor are to be borne by the contractor (including eventual disassembly and reassembly costs) even if it transpires that there was no defect. Our liability to pay dam-ages in the case of unjustified demands remain unaffected; we are only liable when we recognised that there was no defect or were grossly negligent in failing to recognise this.

11.6The statute of limitations for our claims against defects shall be a unified three-year period for all deliveries and sundry services, insofar as law has prescribed no longer period. The commencement of the statute of limitations is based on statutory regulations. If the contractor improves the performance, then the statute of limitations for the improvement services and the improvement of the underlying defect begins anew, unless we must as-sume from the behaviour of the supplier, that they do not admit they are obliged to these measures, and are only undertaking the replacement delivery or defect improvements as a gesture of goodwill or similar reasons.

11.7If a defect becomes manifest within 6 months of the transfer of risk, it shall be assumed that the defect was present at the time of transfer of risk, unless, this assumption is incompatible with the nature of the defect or the type of goods. For parts of the delivery completely overhauled or repaired within the statute of limitations of our claims against defects, the period when the statute of limitations recommences is when the contractor has fulfilled our claim for subsequent performance, unless we must assume from the behaviour of the supplier, that they do not admit they are obliged to these measures, and are only undertaking the replacement delivery or defect improvements as a gesture of goodwill or similar reasons.

11.8The contractor guarantees that the products are free from defects in the sense of the Product Liability Act. If we make claims against the contractor on the grounds of product liability on account of defects in the delivery, then the contractor indemnifies us from any liability. The contractor bears all the costs and expenses in these cases, including the costs of any possible action or re-call process. The content and scope of such a re-call process shall be agreed with the contractor, if possible and reasonable. Furthermore, statutory provisions shall apply.

11.9 The contractor must conclude a product liability insurance contract with a lump sum insured amount of at least 10 Mi. EUR per personal injury/material damage and maintain this during the contract lifetime.

11.10 The contractor provides us with irrevocable and statute barred assignment of all claims against defects against their sub suppliers and subcontractors upon conclusion of the contract. We can accept this offer with a written declaration to the contractor in total or with regards to individual sub suppliers/ subcontractors.
Also insofar as we accept the offer of assignment for claims for defects against sub suppliers/subcontractors, our claims for defects against the con-tractor remain unaffected. If we lodge a claim for defects against the contractor, then the contractor may demand the reassignment of already assigned claims for defects regarding the concerned defect against their sub supplier/subcontractor.

12. Third party property rights

The contractor assumes liability that their performance does not infringe on any third party property rights, domestic or international. In the event of infringement of third party property rights through usage of the performance provided, then the contractor must undertake, at their own cost, to ensure that we receive the rights to the deliverable or a subsequent delivery in which no third party rights are infringed. The contractor is obliged furthermore to indemnify us resp. our customers from all claims for damages arising from their performance and causing infringement to domestic or foreign property rights.

13. Confidentiality, data protection

13.1 The contractor is obliged all our (not overt) technical, economic and personal procedures and circumstances of which he learns in association with our contractual relationships, which must, even in the case of doubt, be handled as company secrets and secrecy must be maintained and to ensure that third parties (also family members and employees not associated with the business) receive no unauthorised information. The confidentiality obligation continues to apply after the ending of the contract.

13.2 Furthermore the contractor shall come to an agreement with each sub supplier/subcontractor ensuring that the obligations set out in Para. 13.1 apply to each sub supplier/subcontractor regarding us.

13.3 Should the contractor be culpable of violating these obligations from Para. 13.1 or 13.2, then they are obliged, in each individual case of violation, to pay a contractual penalty of 5% of the net value of contract, unless the contractor can prove to us that no or very limited damages have occurred. In any case we are entitled to the compensation for the damages actually suffered.

13.4 The contractor agrees that, that all personal data required for the business relationship as well as the contract concluded shall be stored electronically and solely used for our own purposes.

14. Language place of performance, place of jurisdiction and applicable law

14.1German is the language of negotiation and of the contract. Language of contract implementation is the language of negotiation and the contract.

14.2 Place of performance for the contractor's obligation is the location given in the order (place of destination). Should no place of destination be given or nothing contrary has been arranged, the place of performance is our headquarters at Zusmarshausen.

14.3 If the contractor is a merchant, the exclusive court of jurisdiction for all disputes arising directly and indirectly from the contract shall be Augsburg. Irrespective of whether the customer is a merchant this shall also apply when the contractor moves their residence or customary abode to a foreign country or when their residence or customary abode is unknown at the time when legal action is filed. However we shall also be entitled to take action at the general legal venue of the contractor.

14.4 All legal relations and legal acts in the relationship arising from and between us and the contractor are exclusively subject to the law of the Federal Republic of Germany with the exception of the United Nations convention on contracts for the international sales of goods (CISG).

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