

## **Standard Purchasing Terms and Conditions of B&S Industrieservice GmbH (B&S)**

**Per: 04/ 2011 – Rev. 1**

### **§ 1 Exclusive Application**

1. Unless expressly agreed otherwise in writing in a specific case for all or some individual provisions, these Purchasing Terms and Conditions shall apply exclusively to any and all contracts and orders issued by us and to agreements entered into on that basis – hereinafter referred to as "Order(s)". They shall also apply to any future Orders. Any and all standard terms and conditions of the Contractor or Supplier – hereinafter referred to as "Supplier(s)" – shall not be acknowledged by us *per se*, even if we do not expressly contest same or accept the Supplier's goods/services without reservation in knowledge of the Supplier's standard terms and conditions and/or pay the Supplier's invoices without reservation.

2. Any deviations from or modifications to agreements between the Supplier and B&S, including these Purchasing Terms and Conditions, must be in writing. This writing requirement may be waived in writing only.

3. Should these Purchasing Terms and Conditions or individual legal transactions between B&S and the Supplier require written form, the relief under § 127 paragraph 2 of the German Civil Code ("BGB") shall apply.

### **§ 2 Offer, Order, Order Confirmation**

1. Any offers by the Supplier shall be made free of charge and shall not give rise to any obligation for us. In the offer, the Supplier

shall not deviate in any respect from the terms of our enquiry. In the event of deviations, the Supplier shall make express reference thereto.

2. The Supplier shall accept in writing our order within a period of 3 (three) business days of receipt (order confirmation); otherwise, we may freely revoke the order without any further obligation on our part. Should the order confirmation deviate from the actual order, we shall be bound to such deviation only if the Supplier makes express reference thereto and we consent to the deviation in writing. The acceptance of goods or services and payments by us shall not constitute consent.

### **§ 3 Prices and Payment**

1. The agreed prices are fixed prices. Subsequent price increases, including those due to increased labour or material costs, shall be excluded. Unless expressly agreed in writing in a specific case, the prices shall cover "carriage paid" delivery, including packaging; the return of packaging shall require a separate agreement.

2. Invoices shall be issued in EURO, and payments by B&S shall be made in EURO only.

3. Payments by B&S shall be made within 10 days with a cash discount of 3%, or within 30 days net, each such period being calculated from receipt of a proper and reviewable invoice.

4. We shall be entitled to the statutory rights of set-off and retention without limitation.

#### **§ 4 Delivery Time and Delivery**

1. The agreed delivery time shall be binding and strictly adhered to. The timeliness of deliveries shall be determined by the time of receipt at the point of receipt stipulated by B&S. The timeliness of deliveries requiring installation and/or assembly and of other services shall be determined when they are ready for acceptance. B&S shall be notified without undue delay in the event of an identified delay in a delivery or service – stating the reasons therefor and the foreseeable duration – and a decision by B&S's shall be obtained; the statutory rights to which we are entitled for late delivery or services shall remain unaffected thereby.

2. Should the Supplier default in delivery, we shall be entitled to the relevant statutory claims without limitation.

3. Deliveries and services shall be provided "carriage paid", including packaging.

4. Partial deliveries and early deliveries shall be permissible only if we have expressly consented thereto in writing. However, the payment claim shall fall due and payable no sooner than the (original) agreed delivery date.

5. In the event of *force majeure*, stoppages or disruptions, in particular, strikes or other unforeseeable events for which we are not responsible and that make acceptance or use of

the goods/service at our business or at our customer's impossible or considerably more difficult, our obligation to take acceptance shall be reasonably postponed in accordance with our actual needs. If acceptance is delayed as a result by more than 8 (eight) weeks, we may also – at our discretion – rescind the contract, in whole or in part (based on the quantity affected by the delay).

#### **§ 5 Passing of Risk, Acquisition of Title**

1. The risk of accidental damage or accidental destruction (loss) to the delivery shall pass only upon receipt at the place of receipt stipulated by us. This shall apply even if we have stated that we are prepared to assume shipping costs. In the event of (additional) services to be provided (installation, assembly, etc.) such risk shall pass to us upon acceptance.

2. We shall acquire unlimited title in the goods upon the passing of risk.

#### **§ 6 Liability for Defects**

1. Upon acceptance, we shall inspect the goods to ensure that the packaging is intact and the number of stipulated packages (*Packstücke*) is complete. Materials that flow into the production process shall be randomly inspected without undue delay – as a rule, within 3 business days – for their quantity, material qualities and conformity with prescribed measurements. In this respect, we shall then without undue delay complain to the Supplier concerning any ascertainable defects and/or quantitative differences. We shall without undue

delay after discovery complain about any latent defects, such as those that can only be ascertained during the processing process, material processing or pre-processing for manufacturing. Should we receive a so-called acceptance inspection certificate from our Supplier, in which the Supplier states that the delivered goods meet the agreed (quality) criteria, our duty to inspect the goods and file a complaint shall be limited to an inspection to ascertain that the packaging is intact and the number of packages is complete upon acceptance of the goods. Otherwise such duty shall be deemed excluded.

2. We shall be entitled to statutory warranty claims without limitation. In particular, our claims to reimbursement for expenses and compensatory damages shall not be limited or excluded in terms of the grounds therefor or their quantum. Notwithstanding the foregoing, B&S may demand that the Supplier – at its expense – first render subsequent performance, i.e. – at our discretion – remedy the defect, supply goods in a perfect condition or provide defect-free services. Section 439 paragraph 3 BGB shall remain unaffected. Moreover, we may, at the Supplier's expense, remedy the defect ourselves in the event of impending danger or special urgency.

3. Unless expressly agreed otherwise in writing in a specific case, the statutory provisions shall apply to the limitations period for warranty claims. Our claims under rights of recourse pursuant to §§ 478, 479 BGB shall remain unaffected.

## **§ 7 Liability**

1. The Supplier's liability – whatever the legal basis therefor – for any and all damage and/or expenses incurred by us in connection with the delivered goods and/or service provided, in particular, as a result of use of the delivered goods in accordance with the terms of the agreement, shall be based on the relevant statutory provisions.

2. Should third parties assert claims against B&S of any kind, whatever the legal basis therefore, based on a defect or a fault in the delivered goods and/or the service provided, the Supplier shall indemnify us against such claim if and to the extent that the cause thereof lies in its control or organisation. In this context, the Supplier shall also reimburse us any and all expenses incurred by us as a result of us having to mount a defence against such claims, and any and all other expenses incurred by us in this connection, including expenses associated with any recalls or similar (precautionary) measures. Any other statutory claims shall remain unaffected.

## **§ 8 Rights in Documents, Confidentiality and Limitation of Use**

1. B&S reserves its title and other rights, in particular, intellectual and industrial property rights (e.g. copyrights), in drawings, norms, guidelines, analytical methods, formulae, samples, calculations and other documents transmitted or otherwise disclosed to the Supplier from time to time or within the framework of contractual performance or the preparations for the contractual relationship.

2. During the contract term and thereafter, the Supplier shall keep strictly confidential the aforementioned documents and any and all other technical and/or business information and our know-how marked "confidential" or (orally) identified as confidential or that, given its nature (taking into account the legal concept of business and trade secrets), must be regarded as confidential, and that is entrusted to it or disclosed to it in association with performance and settlement of an order. Moreover, the Supplier shall use such information solely for purposes of the respective contract and shall impose equivalent obligations upon its employees, suppliers, sub-contractors and other third parties to whom such documents or information or know-how are disclosed. The foregoing obligations shall not apply, however, to information or know-how of which the Supplier had knowledge when it obtained such information or know-how, which forms part of the technological state of the art which is in the public domain, or which is subsequently disclosed without any fault on its part.

3. After settlement of the order, any drawing, norms, guidelines, analytical methods, formulae, illustrations, templates, calculations and other documents and any and all copies thereof shall be returned to B&S without undue delay.

4. The Supplier shall provide B&S with any and all requisite documents necessary for a discussion of the subject matter of the delivery. Such a discussion or any other involvement on the part of B&S shall not discharge the Sup-

plier from its defect-related liability or any other statutory or contractual obligations. Documents of any kind required by B&S for use, installation, assembly, processing, storage, operation, maintenance, inspection, and repair of the subject matter of the delivery shall be provided to B&S in a timely manner, without any request therefor and free of charge.

### **§ 9 Rights in Production Materials**

1. Should we provide the Supplier with moulds, models, tools etc. - hereinafter referred to as "Production Materials" - we shall retain title therein. Any processing or restructuring shall always be carried out for us as the manufacturer within the meaning of § 950 BGB, but without, however, any obligation on our part. If our goods subject to the retention of title are processed together with other items not owned by us, then we shall acquire co-ownership in the new item according to the ratio of the value of our item (purchase price plus value added tax) to the other processed items at the time of processing. If the Production Materials provided by us is connected or inseparably combined with other items not owned by us, we shall acquire co-ownership in the new item according to the ratio of the value of the item subject to the retention of title (purchase price plus value added tax) to the other connected or combined items as at the time of connection or combination. Should the connection or combination be carried out in the manner such that the Supplier's item is to be regarded as the principal item, it is hereby agreed that the (co-) ownership of the Supplier in the integrated item shall pass to us in proportion to the

value of our share in the item. The Supplier shall store the relevant items for us free of charge with the care of an ordinary businessman.

2. The Supplier shall be liable for any and all damage incurred as a result of the Production Materials provided by B&S being improperly processed by the Supplier or its vicarious agent or being destroyed or rendered useless by damage to the Production Materials attributable to the elements.

3. Title in Production Materials manufactured for purposes of implementation of the order by the Supplier shall pass to us upon payment, even if they remain in the Supplier's possession. In the latter case, it shall be deemed agreed that the Supplier has custody of the Production Materials on behalf of B&S. B&S may at any time demand delivery up of the Production Materials. Any rights of retention on the part of the Supplier shall be excluded, unless they are based on counter-claims that have been recognised by us or confirmed in a final and binding judgment.

4. The Supplier shall use the Production Materials exclusively for manufacturing goods ordered by B&S. Moreover, the Supplier shall at its own expense take out any and all necessary insurance policies to protect the Production Materials owned by B&S, and shall insure them in an adequate amount at the replacement value, in particular, against loss, fire, water, theft, burglary, explosion, lightning strike, storm and other damage attributable to the elements and that may typically be covered

by property insurance. However, in the event of culpable action, its liability shall not be restricted to the insurance benefits. At the same time, the Supplier hereby assigns to B&S all compensation claims under such insurance policies; B&S hereby accepts such assignment. The Supplier shall perform any necessary maintenance and inspection work and any maintenance and repair work on the Production Materials at its own cost and in good time.

#### **§ 10 Assembly, Maintenance, Inspections, Repairs, Third Party Employees, Third Party Companies**

Should assembly, maintenance, inspections, repairs, etc. be performed, the appointed person/groups of persons shall conduct themselves in accordance with the instructions of our security experts or our security officer. Moreover, the duties set forth in § 8 shall apply to them *mutatis mutandis*.

#### **§ 11 Third Party Rights**

1. The Supplier warrants that no rights, in particular, no third party industrial property rights (e.g. patents, copyrights, trade marks or other intellectual or industrial property rights) are infringed in connection with its goods or services.

2. Should claims be asserted against B&S by a third party based on the infringement of industrial property rights, the Supplier shall indemnify us against such claims. The Supplier may not without B&S's consent enter into any agreements with the third party to settle its claims based on infringement of industrial

property rights, in particular, reach a settlement. The Supplier's indemnity shall also apply to any and all expenses incurred by B&S under or in connection with the assertion of claims against it by third parties.

**B&S Industrieservice GmbH,  
Olbrichtstraße 2, D-69469 Weinheim**

## **§ 12 Miscellaneous**

1. These Purchasing Terms and Conditions and the entire legal relations between B&S and the Supplier shall be governed by the laws of the Federal Republic of Germany. Application of the United Nations Convention on the International Sale of Goods ("CISG") or any other bilateral or multilateral treaties concerning the harmonisation of international sale of goods shall be excluded.

2. Place of performance for the goods or services shall be the place at which – in accordance with the order – the goods are to be delivered or the service is to be provided. Place of performance for our payment shall be our company's registered office.

3. Forum for any and all disputes under or in connection with these Standard Purchasing Terms and Conditions and under the entire legal relations between B&S and the Supplier is Mannheim, provided the Supplier is a qualified merchant. B&S may, however, also bring proceedings against the Supplier at its general forum.

4. Should one or more of these Purchasing Terms and Conditions or provisions in legal transactions between B&S and the Supplier be or become invalid, the validity of the remaining provisions shall remain unaffected thereby.