

## General Terms and Conditions of Purchase

### I. General; Scope of Application

- (1) Our Terms and Conditions of Purchase shall apply exclusively. We do not recognise any conflicting or deviating conditions of the supplier unless we have expressly agreed to their validity in writing. The acceptance of an offer of a supplier which refers to its general terms and conditions shall not be sufficient for this purpose. An - also - unconditional acceptance of deliveries does not replace the requirement of written consent.

These Terms and Conditions of Purchase shall also apply to all future business transactions with the Purchaser, insofar as legal transactions of a related nature are concerned.

- (2) In addition to the Terms and Conditions of Purchase, the General Packaging Regulations of BMZ Germany GmbH shall apply in accordance with the respective current Logistics Manual.

### II Offer; blanket order, conclusion of contract

- (1) Offers to us are free of charge. Any deviations from our enquiries shall be expressly indicated in the offer; if necessary, corresponding drawings shall be enclosed.
- (2) Our orders must be in writing. They shall be effective without a handwritten signature if a corresponding note is made on the order form. Unless otherwise agreed, our orders shall be confirmed in writing by the contractor within 5 (five) days of receipt of the order, stating the binding delivery time and price. The contractor 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. If the order confirmation contains deviations from the offer and/or our order, the order confirmation shall not constitute a contract. If there is a permanent business relationship (framework agreement) and nothing to the contrary has been agreed, the order shall become effective if the supplier does not object within 5 working days of receipt. An order confirmation deviating from our order shall only become effective if we confirm this at least in text form. In other cases, we reserve the right to withdraw orders if they have not been confirmed in writing in due time.
- (3) Blanket orders are binding only in terms of price and are intended to enable the supplier to make arrangements. An obligation to purchase the non-binding required quantity shall only exist if this has been expressly assured. A price adjustment shall only be made in the event of a significant overshoot or undershoot of the forecast quantity (20%).
- (4) BMZ shall not be liable in the event of obvious errors, spelling mistakes or miscalculations in the order.

### III Prices; Terms of Payment and Delivery, Statute of Limitations

- (1) The price stated in the order shall be binding. Unless otherwise agreed in writing, the price shall include delivery as well as packaging. Delivery shall be made according to DAP (Incoterms 2020) to the respective place of delivery specified by BMZ. Software licence fees are included in the price, unless expressly agreed otherwise.
- (2) The return of packaging requires a special agreement. Insofar as the supplier is obliged to take back the packaging used according to the packaging ordinance, he shall bear the costs of the return transport and the recycling.

- (3) unless otherwise agreed in writing, we shall pay the purchase price after complete receipt of the goods within 30 days, calculated from delivery and receipt of the invoice, with a 3% discount or net within 60 days after receipt of the invoice.
- (4) If the invoice is received before the goods, the latter shall be decisive.
- (5) Claims for payment against us shall become statute-barred within one year.

### IV. Assignment, subcontractors, Right of Retention, Set-Off

- (1) The supplier shall not be entitled to assign his claims against us or to have them collected by third parties without the prior written consent of BMZ, which may not be unreasonably withheld.
- (2) The supplier shall not be entitled to subcontract the performance of its contractual obligations in whole or in part without the prior written consent of BMZ. If BMZ has agreed to the award of subcontracts, copies of the subcontracts shall be submitted by the supplier immediately after issuance to the department responsible for purchasing indicated on this order if and to the extent that this is necessary to verify the manufacture, the terms of the order, the goods to be delivered and/or legal or official requirements. The Supplier's liability for the performance of its contractual obligations by the subcontractor shall remain unaffected. The supplier shall subject the subcontractor to the same contractual conditions, in particular with regard to secrecy and property rights, as it has entered into itself.
- (3) The supplier may only assert a right of set-off and/or retention on the basis of counterclaims which have become res judicata or are undisputed.

### V. Delivery Dates; Due Date, Delay, Compensation, Transfer of Risk

- (1) The supplier shall perform punctually on the delivery dates agreed in the contract. Delivery dates are arrival dates at the respective specified delivery point.
- (2) If the time of performance is determined according to the calendar, default shall occur if the delivery date is missed. If the performance is not determined according to the calendar and the performance is not effected in due time, default shall occur after 10 days at the latest. BMZ reserves the right to set shorter deadlines by means of a reminder.
- (3) If the supplier is in default, he shall be obliged to comply with BMZ's request for express delivery (express or express goods, express courier, express parcel, air freight, etc.) at his own expense.
- (4) In the event of default on the part of the supplier, BMZ shall be entitled to withdraw from the contract and to claim damages after the fruitless expiry of a reasonable grace period. The setting of a grace period shall not be required if the delivery date has been agreed as "fixed", i.e. BMZ has expressed in the respective order that its interest in performance depends on timely delivery, or if the supplier declares that it will not be able to deliver even within the grace period. In case of urgency, a grace period of 2 (two) working days shall suffice.
- (5) If the supplier is culpably in default, BMZ may - in addition to further statutory claims - demand lump-sum compensation for our damage caused by default in the amount of 0.3% of the net price per working day, but in total not more than 5% of the net price of the order total incurred up to the time of default. We reserve the right to prove that we have incurred higher damages. The contractor reserves the right to

- prove that we have incurred no damage at all or only a significantly lower damage.
- (6) If the contractor is in default, we are entitled to make covering purchases if and to the extent that this is necessary to avert imminent consequential damage caused by the default. Any additional costs arising from this shall be borne by the contractor. The supplier shall be obliged to assume all damages arising from his delay, including any consequential damages.
  - (7) BMZ shall be entitled to claim liquidated damages in the amount of the order value of the respective delayed goods instead of the actual consequential damages due to covering purchases and/or delivery failures according to clause 6. BMZ reserves the right to prove a higher damage. The supplier reserves the right to prove a lesser damage
  - (8) A premature delivery or service which takes place without express prior consent does not have to be accepted by us. 9. the supplier is obligated to provide BMZ with proof of higher damages.
  - (9) The supplier shall be obliged to inform BMZ immediately in writing of any delays in delivery and the reasons therefor. Any knowledge of BMZ of the reasons for the delay shall not replace the written notification by the supplier. The supplier shall be liable for all damages resulting from an omitted or delayed notification. Irrespective of this, the supplier must also compensate for all damages resulting from a delay in delivery for which he is responsible.
  - (10) The risk shall only pass to BMZ at the place of receipt upon acceptance by BMZ or, in case of installation or assembly of the delivered goods by the supplier, upon commissioning at BMZ.
  - (11) The acceptance of a delayed delivery shall not be deemed a waiver of claims for compensation.

#### **VI. Requirements on the Delivery Item; Documentation**

- (1) The supplier is obliged to state exactly the BMZ order number and BMZ article number on all documents, shipping documents and delivery notes. Separate documents are required for each order. If damages arise from non-compliance, these shall be borne by the supplier.
- (2) The supplier is obliged to submit a written declaration on the customs origin of the goods for all delivered goods. This declaration shall be sent to BMZ without delay.
- (3) The delivery item shall be executed in a customary manner in accordance with BMZ's written order, the relevant DIN regulations and the corresponding European standards in the respective valid version.
- (4) The supplier shall guarantee that the delivery item is free of defects. The supplier warrants that the delivery item possesses the warranted characteristics, complies with the respectively recognised rules of technology, possesses all test marks and approvals necessary for its use or operation and is not afflicted with defects which nullify or reduce the value or the suitability for the intended use. Insofar as an EC declaration of conformity with CE marking, EC manufacturer's declaration or certification is required for the manufacture or operation of the delivery item, e.g. type examination (GS), the supplier undertakes to hand over to us the documentation in German on which this is based. He shall bear all costs associated with these approvals.

#### **VII Examination for Defects; Warranty, Statute of Limitations**

- (1) The supplier warrants that the goods delivered by him comply with the specification, are of the quality customary in the market and are otherwise free from defects. If the supplier is responsible for the design, he shall additionally guarantee that the design is free of defects and that the delivered goods are suitable for the specific purpose for which they were purchased.
- (2) The obligation to examine and give notice of defects pursuant to § 377 of the German Commercial Code (HGB) shall be excluded for hidden defects insofar as BMZ has carried out a minimum inspection on the basis of the delivery note and for transport damage.
- (3) BMZ fulfils the obligation to give notice of defects according to § 377 HGB, as far as the notice of defects is given within a period of 2 weeks after discovery. A verbal complaint shall be sufficient.
- (4) If BMZ returns defective goods, BMZ shall be entitled to charge the supplier back the invoice amount plus a one-off processing fee of € 75. BMZ reserves the right to prove higher expenses. The supplier reserves the right to prove lower or no expenses.
- (5) Defective deliveries shall be replaced immediately by defect-free deliveries and defective services shall be repeated free of defects. BMZ shall be entitled, after prior information and expiry of a grace period which is reasonably short for the situation, to remedy the defect itself or to arrange for a replacement delivery at the supplier's expense if there is imminent danger or a particular urgency. This shall also apply insofar as the supplier delivers or performs defectively or late and BMZ must act immediately in order to avoid its own delay in delivery.
- (6) If the goods are already in the production process of the buyer or his customer and if it is not reasonable for the buyer to have the defect remedied by the supplier for operational reasons, in particular production reasons, or if the supplier is not in a position to do so, the buyer can have the goods replaced or repaired himself or by a third party at the expense and risk of the supplier.
- (7) The warranty period shall be 36 months, calculated from the date of installation to be proven by us. For defects notified by us within the warranty period, our claims shall become statute-barred at the earliest 6 months after the notification of the defect.

#### **VIII. Product Liability; Indemnification; Liability insurance cover**

- (1) The supplier shall furthermore warrant that his products are free of defects within the meaning of the Product Liability Act. The supplier shall indemnify and hold BMZ harmless to the full extent for all claims based on a defectiveness or defectiveness of the delivered product, unless he proves that he is not at fault.
- (2) Insofar as the supplier is responsible for product damage, he shall be obliged to indemnify BMZ against claims for damages by third parties upon first request insofar as the cause lies within his sphere of control and organisation. The supplier's subcontractors shall be deemed his vicarious agents within the meaning of § 278 BGB.
- (3) In this context, the supplier shall also be obliged to reimburse BMZ for any expenses pursuant to §§ 683, 670 of the German Civil Code (BGB) arising from or in connection with a recall campaign carried out by us. BMZ shall inform the supplier immediately about the content and scope of the recall measures to be carried out - as far as possible and reasonable - and give him the opportunity to comment.

The supplier is also obliged to reimburse the costs of the necessary legal action.

- (4) The supplier undertakes to maintain a product liability insurance with an insured sum of € 10 million per personal injury/property damage - lump sum - which must be proven on request.
- (5) Further claims for damages remain unaffected.

#### **IX. Rights of BMZ, Tools, Contractual Penalty**

- (1) We reserve all property rights and copyrights to illustrations, drawings, sketches, calculations, technical data, specifications, system requirements, supplier lists, customer lists and other documents. They may not be made accessible to third parties without our express written consent and must be treated with care by the supplier. All rights, with the exception of the order-related rights of joint use, are the sole property of BMZ. They are to be used exclusively for the manufacture of our order. Products which have been manufactured or further developed with the aid of the above-mentioned documents may only be supplied to third parties with our express consent, which must be given in writing.
- (2) Tools which are made available to the supplier for production shall remain the property of BMZ. They shall be clearly marked by the supplier at his production site as the property of BMZ. They may only be used for the manufacture of products for BMZ.
- (3) The materials mentioned in paragraphs 1 and 2 are to be returned to us after completion without being requested to do so. They must be kept secret from third parties. For the rest, reference is made to section IX.
- (4) If the supplier culpably violates the obligations under paragraphs 1 and 2, the supplier shall pay us a contractual penalty in an appropriate amount to be determined at our reasonable discretion within the meaning of Section 315 of the German Civil Code (BGB), the appropriateness of which shall be reviewed by the competent court in the event of a dispute. The right to claim further damages is reserved. Any contractual penalty incurred shall be set off against any damages.

#### **X. Industrial Property Rights**

- (1) The supplier shall be responsible for ensuring that his services do not infringe third-party patents and other industrial property rights. He undertakes to indemnify BMZ against any claims of third parties for infringement of these rights and to otherwise hold BMZ harmless. If licence fees are to be paid in connection with his services, he shall bear these. The supplier shall be obliged to reimburse BMZ for the costs of any necessary legal action and defence against damages.
- (2) If industrial property rights of the supplier are required for the use of the goods by the buyer, the supplier shall grant the buyer the worldwide, irrevocable and free of charge right to use, repair or otherwise use or resell the goods himself or through third parties at his own discretion. In the event that the supplier fails to deliver for any reason whatsoever, the supplier also grants the buyer the right to rebuild the goods himself or through a third party. If the supplier is responsible for the non-delivery, the right shall be granted free of charge, otherwise for an appropriate fee.
- (3) Insofar as the supplier undertakes to deliver software, the supplier shall ensure that BMZ is granted the

licences required to use the software. Unless otherwise agreed, the licence shall apply including the use of subsequent newer versions and for use on any number of computers used internally by BMZ (central processing unit/peripheral devices).

- (4) If a delivery contract contains development work, the buyer shall acquire ownership of all development results. The costs for this are included in the product price. The supplier shall also grant the purchaser the irrevocable, non-exclusive, free of charge, worldwide licence, with the right to grant sub-licences, to all property rights on which the development results are based or which the purchaser requires for the direct or indirect use of the development results.

#### **XI. Secrecy**

The supplier undertakes to treat all documents made available to him, e.g. templates, samples, models, drawings, etc., as strictly confidential and not to make them available to any third party or to exploit them himself.

#### **XII Written Form, Severability Clause**

- (1) Amendments or additions to this contract must be made in writing. This also applies to amendments to this written form clause."
- (2) Should individual parts of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions. Invalid provisions shall be replaced by provisions which, in the exercise of reasonable discretion, come as close as possible to the economic intention.

#### **XIII Place of Jurisdiction; Place of Performance, Applicable Law**

- (1) If the supplier is a merchant, the place of jurisdiction shall be the District Court of Frankfurt am Main, Germany.
- (2) Unless otherwise stated in the order, our registered office shall be the place of performance.
- (3) All relations between the supplier and BMZ shall be governed exclusively by German law. The application of the provisions of the UN Convention on Contracts for the International Sale of Goods and German international private law shall be excluded.

22.06.2020, Karlstein