

## General Purchase Order Terms and Conditions

(Version 3/2015)

### I. Scope

1. The goods you (hereinafter "Supplier") deliver and the services you render to BBM Akustik Technologie GmbH shall be subject exclusively to the following purchase order terms and conditions, which apply also to future business relations, even if they are not explicitly accepted once again. Any conflicting or deviating delivery terms or payment conditions of the Supplier will not be accepted unless they have been explicitly agreed in writing.

Our purchase order terms and conditions shall apply, if the Supplier's conflicting terms and conditions are known and the goods delivered by the Supplier are nevertheless accepted without reservation.

2. Our purchase order terms and conditions shall apply only to companies within the meaning of section 14 of the German Civil Code or to legal entities under public law.
3. Any framework or fixed-price agreements made with the Supplier shall have precedence. If appropriate, such agreements will be supplemented by our purchase order terms and conditions.

### II. Purchase order/changes to performance/termination/withdrawal

1. Purchase orders and requests for delivery and any changes or supplements to such orders and requests must be in writing. Verbal agreements made prior to or following the conclusion of a contract shall have no effect unless confirmed in writing.
2. Deviations from manufacturing documents are subject to consent of BBM Akustik Technologie GmbH prior to manufacture. Supplier shall document any such deviations during manufacture. Deviations causing delay in delivery will not be accepted.
3. Supplier shall acknowledge our purchase order in writing within five workdays (time for acceptance). Our order can be cancelled in the absence of acknowledgment by the Supplier.
4. Supplier shall not be entitled to subcontract without our written consent.
5. We are entitled to demand subsequent changes to the agreed scope of supply for special operational reasons or if such changes are in accordance with standard commercial practice or can be reasonably demanded from the Supplier.

Within ten workdays after such requests, Supplier will let us know whether the changes asked for are feasible and will inform us about any cost decreases or increases arising from such changes.

6. We shall be entitled to terminate the contract for cause or withdraw from the contract, if the Supplier has filed an application to open insolvency proceedings, has suspended payments not only temporarily, if insolvency proceedings have been opened on the Supplier's assets or if such proceedings have been rejected because of insufficient assets.

We expressly reserve the right to terminate the contract for other reasons.

### III. Prices/payment

1. The price specified in the purchase order shall be binding. Price increases shall have no effect unless they are confirmed by us in writing.
2. All prices specified in the purchase order include VAT.
3. Unless otherwise agreed in writing, delivery shall include packaging and shall be carriage-free to the delivery point stated in the purchase order.

4. Unless otherwise agreed in writing, and if acceptance of the goods/services is not feasible, net payment of the purchase price will be made by the usual method within sixty days from delivery of the goods or from rendering the service and receipt of the invoice, or fourteen days after delivery and receipt of the invoice with a 3 % discount.
5. Costs arising from repeat examinations or associated with increases in monitoring activities and caused by the Supplier shall be borne by the Supplier.
6. Set-off and withholding of payments shall be allowed in accordance with statutory provisions.

#### **IV. Shipment/transfer of risk**

1. In addition to the delivery note, a forwarding advice having the same content must be sent immediately after shipment of the goods.
2. The risk in the goods shall remain with the Supplier until the time we take delivery of the goods at the place specified in the purchase order.

#### **V. Delivery time/delay in delivery**

1. The delivery time stated in the purchase order is binding.
2. Supplier shall be fully responsible for the timely procurement of the materials and services required for delivering the goods and rendering the services specified in the purchase order.
3. Supplier shall inform us immediately, if unexpected circumstances arise or if the Supplier can foresee that the agreed delivery date cannot be complied with.
4. In the event of a delay in delivery, we are entitled to demand the delivery of the goods or the rendering of the services at a later time under the agreed terms and conditions.  
Furthermore, we are eligible for any lawful claims. After an adequate period of grace, we shall have the right to withdraw from the contract or from part of it, to terminate the contract and to claim damages. If damages are claimed, the Supplier shall be entitled to provide evidence that the breach of his duties was occasioned by causes beyond his control.
5. If we are unable to ask for the delivery of the goods ordered at the delivery date agreed, Supplier shall store these goods for a period of up to six months following the delivery date, at the Supplier's risk and expense.
6. Although necessary documents, data, materials, etc. have not been provided by us, the Supplier shall nevertheless be in default unless he has sent us a reminder and has not received these documents, data, materials, etc. in due time.
7. If the Supplier is in default, we are entitled to demand a contract penalty amounting to 0.3 % of the agreed net price per workday. This contract penalty shall not exceed 10 % of the agreed net price. We shall have the right to demand this penalty in addition to performance and as a minimum amount of damages to be paid by the Supplier according to statutory provisions. Our right to claim further damages shall not be affected.

#### **VI. Quality assurance/documentation**

1. In connection with the goods to be delivered, the Supplier shall establish and prove the existence of a quality management system or at least of a written manufacturing and surveillance process.
2. We reserve the right to convince ourselves at the Supplier's premises of the effectiveness of the Supplier's quality management system or the defined processes. The Supplier shall give us unfettered access to his factory, to the necessary extent, and shall agree to an audit of his plant.

3. Any changes in the specified product features or in the manufacturing processes influencing such features shall not be allowed without our previous consent.
4. Supplier shall continuously verify the quality of the goods to be delivered. The contract parties will provide each other information about any methods of improving the quality of such products.
5. In the event that the type and scope of such examinations and test agents and methods have not been firmly agreed with the Supplier, we are prepared to discuss our know-how, experience and possibilities with the Supplier, at the Supplier's request.
6. As regards the features highlighted in the technical documentation, the Supplier shall keep records about when, how and by whom these features of the goods to be delivered have been examined and about the outcome of such examinations. The traceability of the materials used and of the manufacturing processes regarding these features shall be ensured by appropriate identification.
7. Test documents will be kept for ten years and will be made available to us as required. The same obligations shall be imposed on the Supplier's subcontractors in accordance with statutory provisions.
8. At our request, the Supplier shall make available a Supplier's Declaration and/or a Supplier's Long-Term Declaration complying with the requirements of the regulation EC 1207/2007.

#### **VII. Secrecy**

1. Supplier agrees to treat as trade secret and maintain strict confidentiality concerning all of the not generally known commercial and technical information provided to the Supplier in connection with our business relations.
2. Figures, plans, models, designs and other documents or objects shall not be surrendered or made accessible to third parties and shall be copied at the Supplier's premises only to the extent necessary for operational purposes and in accordance with the copyright law.
3. The same obligations shall be imposed on the Supplier's subcontractors.
4. This duty of confidentiality shall apply after termination of the contract, unless the information provided by us is in the public domain.

#### **VIII. Intellectual property**

1. We reserve ownership and property rights concerning figures, plans, models, designs and other documents or objects.
2. Our documents shall only be used to carry out a specific order. The rules of the above section VII shall apply.
3. After execution of an order, the Supplier will return the whole documentation without being asked to do so.
4. The same obligations shall be imposed on the Supplier's subcontractors.

#### **IX. Claims due to material deficiency and right of recourse**

1. Before shipment, the Supplier shall carry out a final examination of the goods to be delivered to detect any recognizable qualitative and quantitative deviations, and shall document the outcome of this examination which may be carried out in our presence or in the presence of our customer.
2. Supplier warrants that all of the goods delivered and services rendered including assembled products (if applicable) are in the agreed condition.  
Furthermore, the Supplier guarantees that his performance is in accordance with the recognized rules of technology and with the relevant provisions and guidelines of public authorities, employers' liability insurance associations and professional associations.

3. Whenever economically and technically possible, the Supplier shall use environmentally friendly products and procedures for the goods to be delivered and the services to be rendered, including the products and services provided by third parties.  
Supplier shall be liable for the environmental compatibility of the products and packaging materials delivered and for any consequential damage caused by breaches of the statutory regulations concerning their disposal.
4. Defects are deemed to be notified in due time, if the corresponding notice is received by the Supplier within ten workdays after delivery, or in case of concealed defects, within ten days after discovery of the defect or after receipt of a notice of defect from our customer.
5. We have the right to assert our full statutory warranty claims.  
Any defects have to be remedied immediately.  
According to statutory provisions, we will have a choice between immediate remedy of the defects free of charge or exchange of the defective parts and reimbursement of expenses incurred. If the defects are discovered upon machining, processing or using these products, we are entitled to receive a refund of the costs incurred.  
The right to withdrawal, abatement and especially to damages instead of performance remains unaffected.
6. In urgent cases and if the Supplier is in default with respect to subsequent performance, we will be entitled to remedy the defect at the Supplier's expense.  
If we give the Supplier the opportunity of subsequent performance, we need to set an adequate period of time for proper remedy of the defects. This period begins on the day the defect is notified. After expiry of this period without remedy of the defect, we will have the choice between withdrawal from the contract, abatement of the purchase price and/or claim for damages.
7. Notwithstanding our approval of the drawings and calculations provided by the Supplier, the Supplier's warranty responsibility remains unaffected.
8. In the event that costs arise from the Supplier's defective performance, especially transport and travel expenses, labour and material costs, the Supplier shall reimburse us for these costs and expenses.
9. If we take back sold goods as a result of the deficiencies of products delivered by the Supplier or if our customer abates the purchase price for this reason or if claims are asserted against us, we reserve the right to take recourse against the Supplier. Otherwise necessary deadlines need not be set in this connection.
10. We will be entitled to demand reimbursement of the costs arising from the business relations with customers and borne by us, when the customers are entitled to the refund of expenses incurred as a result of subsequent performance, especially transport and travel expenses, labour and material costs.

## **X. Acceptance**

1. Formal acceptance has been agreed, provided the Supplier's performance is based on a contract for works and services.
2. Acceptance by our final customer or inspections carried out by us will not be regarded as acceptance within the meaning of section 640 I of the German civil code. Notwithstanding the putting into service or acceptance by the final customer, Supplier will be bound to satisfy the contract until formal acceptance is confirmed by us.  
Partial acceptance or production acceptance by us or by our customer will be possible any time after consultation with the Supplier.

## **XI. Statutory limitation**

1. The warranty period is 36 months, unless the mandatory provisions of sections 478 and 479 of the German Civil Code apply.
2. Limitation begins at the time we take delivery of the goods (passing of the risk), and in case of contracts for work and services after the final inspection.
3. For products repaired before expiry of the period of limitation, this period is deemed to begin once again after completion of subsequent performance by the Supplier and to end not before two months after we have satisfied the Supplier's claims and no later than after five years following delivery by the Supplier.

#### **XI. Product liability**

1. In the event that the Supplier is responsible for defects of a product, the Supplier shall hold us harmless at first request against claims of third parties including the necessary defence costs. The supplier is deemed responsible especially in those cases in which the defect has been caused within his organization and where the Supplier is liable with regard to legal relationship with third parties.
2. Under these circumstances, the Supplier shall refund any expenses incurred, according to sections 683 and 670 or sections 830, 840 and 426 of the German Civil Code as well as expenses arising from or in connection with recall actions carried out by us. The Supplier will be informed in advance and in due time about the content and extent of such recall actions – if possible and reasonable – to give him the opportunity to express his opinion.
3. We will ensure the necessary information of the relevant authority according to the provisions of the Product Safety Act after consultation with the Supplier.
4. The Supplier shall take out and maintain product liability insurance at his expense with a global coverage of at least five million euros per person/material damage event. Any further claims for damages remain unaffected.

#### **XII. Deficiency in title**

1. The Supplier ensures that no third parties' rights will be infringed in connection with his delivery.
2. In the event that claims are asserted against us due to the infringement of third parties' property rights, the Supplier shall indemnify us at first written notice. In case of third-party claims for damages, the Supplier may provide evidence that he did not cause any infringement of the third party's rights.
3. The Supplier's responsibility for indemnification includes any expenses arising from or in connection with claims of third parties.
4. The period of limitation is 36 months after the day the claim was brought to our knowledge.

#### **XIII. Reservation of title/parts made available to the Supplier/tools**

1. In the event that the Supplier has reserved his title to the goods delivered, this reservation is only effective until the goods are paid for, unless we have become owner of the goods through processing, binding or mixing.
2. Any prolonged or extended reservation of title will not be accepted.
3. Whenever parts are made available to the Supplier, we will reserve our title to such parts. Any processing or transformation of such parts is carried out on our behalf. If the parts made available by us are mixed with other products not belonging to us in such a manner that they can no more be separated from these products, we will be co-proprietor of the resulting product in proportion to the value of our part (purchase price plus VAT) to the value of the other processed or mixed components at the time of processing or mixing.
4. We expressly reserve our title to tools made available by us.

These tools may be used by the Supplier only for carrying out our purchase order.

5. In the event that the charging liens granted to us exceed the purchase price of all reserved goods that have not yet been paid for by more than 10 %, we shall release charging liens of our choice at the Supplier's request.
6. The Supplier shall not be permitted to assign his claims against us to third parties.

#### **XIV. Place of performance/place of jurisdiction/governing law**

1. Subject to alterations in connection with a purchase order, our commercial domicile is the place of performance.
2. With regard to business people and legal entities under public law and in the absence of written agreements to the contrary, the parties submit their disputes arising out of this business relation to the exclusive jurisdiction of the courts of Munich. However, we shall have the right to take proceedings against the Supplier at his commercial domicile.
3. The business relation with the Supplier will be governed exclusively by German law. The Law of Conflict and the CISG shall not apply.

#### **XV. Data processing/separability**

1. Supplier agrees to the processing and use of Supplier's personal data made available in the framework of or in connection with our business relation, to the extent permitted by the Federal Data Protection Act.
2. If any provision of this General Purchase Order Terms and Conditions or a regulation in other agreements between us should be or become invalid, the remainder of the conditions/agreements shall not be affected thereby. In this case, the parties shall try to replace the invalid provision by a valid one as close as possible in its economic purpose.

BBM Akustik Technologie GmbH