

General Terms and Conditions of Purchase

of BBM Bergbau GmbH, Dieter-aus-dem-Siepen-Platz 1, 45468 Mülheim an der Ruhr, for use with a natural person or legal entity acting in the capacity as a commercial enterprise or as an independent contractor at the time the contract is concluded (business person, hereinafter "Supplier").

I. General Provisions

1. All orders placed by BBM Bergbau GmbH (hereinafter "BBM") are exclusively subject to these General Terms and Conditions of Purchase ("Purchase Conditions"), in the version valid upon conclusion of the contract. They also apply to all future deliveries, services or offers by the respective Supplier, even if they are not agreed upon separately each time. Deviating, conflicting or amending conditions of the Supplier shall not be part of the contract even if BBM unconditionally accepts the delivery despite having knowledge of the Supplier's conditions. Individual arrangements concluded by the Parties in specific cases may override the respective provisions of these Purchase Conditions.
2. Material declarations by the Supplier after the signing of the contract must be in written form to be valid. With exception of directors and authorised officers employees of BBM are not empowered to conclude verbal agreements deviating from these Purchase Conditions. Such verbal agreements concluded by employees not being empowered to do so are required to be approved in written form to be valid.

II. Orders

1. Orders placed by BBM and changes or additions to said orders shall be subject to text or written form for evidential purposes.
2. BBM shall be entitled to revoke its orders free of charge, if the Supplier does not confirm the unchanged order within two weeks of receipt in text or written form. Revocation shall be possible within two further weeks.
3. Offers, estimations of cost, drawings, technical documentations or other documents prepared for BBM by the supplier prior to the conclusion of the contract, are free of cost for BBM and shall not oblige BBM to place an order.

III. Deadlines and consequences of delays

1. Agreed deadlines for deliveries and services shall be binding. Decisive for compliance with the delivery date or the delivery term in the event of a delivery without installation or assembly, is the receipt of the goods at BBM or a recipient to be named by BBM and, in the event of a delivery with installation or assembly, upon acceptance by BBM. The Supplier shall be obliged to notify BBM of any recognisable delays in the execution of its service or delivery immediately in writing, stating the reasons for this and the expected duration of the delay. The Supplier can only claim that the delay has been caused by reasons beyond its control, if the Supplier has complied with its notification obligation.
2. In the event that the Supplier culpably fails to perform its duties within a period of grace set by BBM, BBM shall be entitled to refuse acceptance, to withdraw from the contract or to demand damages for non-performance without further notice. BBM reserves all further rights.
3. If the Supplier culpably exceeds the agreed delivery date, or if the Supplier is culpably in default with its delivery obligations for other reasons, the Supplier shall pay to BBM a penalty in the amount of 0.15% of the net price of each order for each calendar day in default. The penalty shall be limited to a maximum of 5% of the net price of the order. The assertion of further claims for damages due to the delay shall remain unaffected, the forfeited contractual penalty shall be, however, offset against these claims for damages. The penalty may be claimed until the final payment of the goods supplied delayed.
4. The legal requirements shall apply for the occurrence of default of BBM. Even if a specific date has been set for a certain operation or contribution (e. g. providing material) of BBM or if such a date is definable, the Supplier is obliged to expressly offer his service to BBM. In the case that BBM is defaulted, the Supplier is entitled to charge its additional costs pursuant to the legal requirements (§ 304 BGB). In the case that the contract concerns non-fungible goods that are to be produced by the Supplier the Supplier shall only be entitled to further reaching rights if BBM is obliged to provide assistance and if BBM is responsible for the failure of assistance.

IV. Prices and Payment

1. Unless expressly agreed otherwise, the prices stated by BBM in the order shall be valid and shall include the delivery with duties paid and free to destination, including transport, unloading and packaging.
2. The prices are fixed prices and are net plus the respective applicable VAT, which will be shown separately on the invoice. Any additional claims, for example, due to increases in wages or prices for materials, shall be excluded.
3. The Supplier's claim for payment shall be due 30 days following receipt of the goods and the invoice. Payment within 14 days is discounted 3%.
4. Invoices must be sent separately for each order in triplicate to the address specified in the order and include the order and contract number, the order date, the quantity and quantity unit, the item name and item number of BBM, and must comply with the statutory requirements regarding invoices; original invoices may under no circumstances be sent enclosed with the deliveries. The Supplier shall be responsible for the consequences resulting from a failure to comply with these obligations, unless it proves otherwise. The date of receipt of an invoice compliant with all legal formalities shall be deemed the date of the receipt of the invoice, in particular with respect to the determination of the discount period and the due date.
5. Payments may be made by bank transfer. In that case, the time of payment is the day on which the bank of BBM receives the transfer order. Payments by BBM do not imply acceptance of the deliveries or services as contractually agreed.
6. No overdue payment interest may be claimed. The default interest rate shall be determined in accordance with legal provisions, unless the conditions of the Supplier offer more favourable agreements to BBM.

V. Execution and delivery

1. The delivery items must have all properties and include all components and devices in line with the latest state of the art at the time of delivery. Unless otherwise explicitly agreed, all standards and regulations applicable in the Federal Republic of Germany must be observed for all deliveries. Furthermore, the Supplier shall be obliged to comply with European and national safety provisions and accident prevention regulations. The handing over - free of cost - of a documentation which complies with the above regulations, in particular operating manuals, declarations by the manufacturer or conformity documents, certificates, test certificates, technical descriptions and other evidence from the Supplier, shall also form part of its contractual obligation.
2. The Supplier shall in any case be obliged to settle all necessary customs formalities at its own risk and expense, to obtain all necessary import and export licenses and permits for the transit of goods supplied through any country or to obtain any other governmental approvals or documents at its own expense and risk, and to pay taxes and other charges incurred in the course of the export and import of goods and upon their transit through any country, before the goods are shipped.
3. The Supplier may only assign the execution of an order or of a substantial part thereof to third parties with BBM's prior written consent, unless the parts supplied are marketable. Partial deliveries require the written consent of BBM. In this case, the "partial delivery" or "the rest of a delivery" must be clearly noted on the shipping documents; this must also be indicated on the invoices. In the case of partial deliveries, the remaining delivery volume must be indicated. BBM shall notify the Supplier immediately if a delivery is incomplete; in this case, the Supplier shall be obligated to complete the delivery immediately. Furthermore, the Supplier shall be liable for any damage caused to BBM or its customers resulting from the fact that the use or the change of the delivery violates the property rights of a third party. The Supplier shall, at its own expense, hold BBM harmless from any claims made against BBM or its customers by third parties in this context.
4. Each delivery must be accompanied by a delivery note specifying the order number of BBM and the type and quantity of the contents.
5. The goods are usually delivered in non-returnable standard packaging customary in trade. When returnable packaging is used, the Supplier shall provide the packaging on a loan basis. The Supplier shall be responsible for the return consignment at its own expense and risk.
6. As far as software products are concerned, the delivery obligation shall be deemed to have been met only if the complete (system engineering and user) documentation has been handed over.
7. The Supplier shall assume the risk of procurement with respect to all supplies and services necessary for the delivery.
8. If deliveries are carried out earlier than agreed, BBM reserves the right to return the delivery at the Supplier's expense and risk. If the delivery is not returned BBM has the right to store the goods until the delivery date at the Supplier's risk and expense.
9. Subject to other proof, the values measured by BBM during incoming inspection shall be decisive for quantities, weights and dimensions.
10. For excessive deliveries (excess or over-deliveries) the statutory provisions shall apply under the following conditions. BBM may, at its choice, receive the delivery, or receive the ordered quantity and refuse acceptance of the part supplied in excess. BBM shall have the right to refuse the entire delivery, if the excess supply causes a fault in the total goods supplied. In the event of an excess supply, the corresponding risk shall only be transferred to BBM, insofar as BBM accepts the excess part of the delivery. If BBM accepts the excess part of the goods, BBM shall be obliged to pay the contractual price agreed. If BBM refuses to accept the parts delivered in excess, BBM shall be entitled to return the respective parts at the expense and risk of the Supplier or, after an arrangement with the Supplier, store at the Supplier's risk and expense.

VI. Transfer of risk, retention of title

1. The risk of accidental loss and accidental deterioration of the delivered goods shall pass to BBM in the event of a delivery without installation or assembly upon receipt at the delivery address specified by BBM, and in the event of a delivery with installation or assembly, upon acceptance by BBM. Commissioning or use of supplied goods does not replace BBM's declaration of acceptance. Unless otherwise agreed, the ordered goods are transported and shipped at the Supplier's risk and expense. The Supplier shall take out transport insurance and prove to BBM the conclusion of such an insurance contract prior to every delivery.
2. The Supplier's retention of title shall only be part of the contract, if it expires upon payment of the price agreed for the goods subject to retention, and if BBM is entitled to resell or process the goods in the ordinary course of business. Any further retention of title on the part of the Supplier shall be excluded.
3. In case materials provided by BBM are processed or joined by the Supplier, this further processing is deemed to occur on behalf of BBM. This shall also apply if BBM itself further processes the delivered goods, so that BBM shall gain ownership of the processed or joined goods not later than the date of further processing pursuant to the legal requirements.

VII. Testing, inspection and complaint obligations

1. If BBM issues a service description or a service request to the (future) Supplier, the Supplier shall be obliged to verify the accuracy and completeness of the information contained therein. BBM must be informed immediately by the Supplier of contradictions, uncertainties or incompleteness which might have been recognized if due diligence had been exercised while calculating the price and preparing the offer.
2. The Supplier is in principle obliged to subject the goods to appropriate quality controls prior to the delivery to BBM, and to verify in particular whether the goods are of the agreed quality and suitable for the customary use or the use outlined in the contract. The scope and content of the quality control depend on the nature and importance of the goods, the capacity of the Supplier (either as manufacturer or distributor) and the reasonable efforts of a quality inspection.
3. BBM shall be required to test the goods within a reasonable period after delivery (for delivery without installation or assembly), or after assembly (for delivery with installation or assembly) for any deviation in quality or quantity. Incoming goods will be inspected to detect any obvious defects. Hidden defects shall be reported by BBM without undue delay. In every case a notification of defects is in due time, if BBM informs the Supplier within seven days following arrival of the goods respectively regarding concealed defects within seven days following the discovery of the defect.

4. If BBM returns the defective goods to the Supplier, BBM shall be entitled to redebit the Supplier for the invoice amount, plus an administrative fee of 5% of the price of the defective goods. BBM reserves the right to prove that higher expenses have been incurred. The Supplier has the right to prove that lower or no expenses have been incurred.

VIII. Warranty

1. If the Supplier has assumed a warranty for the quality of the goods or for the fact that the goods retain a certain quality over a certain period of time pursuant to Art. 443 German Civil Code (BGB), the Supplier shall be liable vis-à-vis BBM for any damage occurring due to breach of such warranty, irrespective of fault, unless a different legal consequence has been agreed. Third-party warranties shall not be affected.

2. In addition to the rights due to any quality or durability guarantee, BBM shall be entitled in full to all claims for defects under the law. BBM shall in any case and at its own discretion be entitled to claim from the Supplier either subsequent improvement in the form of a remedy of the defects or subsequent delivery of new goods. Both, the subsequent improvement in the form of a remedy of the defects and the subsequent delivery shall take place immediately. The Supplier shall pay all costs necessary for the supplementary performance, in particular costs for transport, travel, labour and materials. Costs to be paid by the Supplier for supplementary performance shall explicitly include any costs for assembly and removal. During the period in which the object of delivery or the service is not in the custody of BBM, the Supplier shall bear the risk of accidental loss and accidental deterioration. The right to compensation, in particular for damages instead of performance, shall be expressly reserved. The subsequent improvement shall be deemed to have failed after the first unsuccessful attempt.

3. If the item contractually owed is defined only by its category, the Supplier shall be liable, irrespective of a default, for the quality of the goods owed, unless said services for the category are generally impossible, and unless the Supplier is prevented from procuring the good due to force majeure.

4. If BBM sets the Supplier a deadline without establishing the type of supplementary performance (remedy of the defect or delivery of a defect-free good), in cases of any doubt, the statement shall be interpreted in such a way that BBM leaves the choice of selecting the type of supplementary performance to the Supplier.

5. If the Supplier has not complied with a reasonable period for supplementary performance set by BBM, BBM is entitled, at its discretion, either to withdraw from the contract or to reduce the payment amount and, additionally, to claim compensation in each case.

6. After the unsuccessful expiry of a reasonable period of time for supplementary performance pursuant to paragraph VIII. 5., BBM shall be entitled, instead of a withdrawal or reduction in payment, to remedy the defect itself or have it remedied by a third party at the Supplier's cost and to demand compensation for the necessary and reasonable expenses, unless such substitute performance is only possible at disproportionately high costs. In this respect, the significance of the defect for BBM, recognisable for the Supplier, and the impairment to the contractually stipulated or customary use of the good as well as the value of the good in a defect-free condition shall be given special consideration.

7. In exceptional cases, BBM shall be entitled to remedy a defect itself at the Supplier's expense or have it remedied by a third party, without having to wait until a reasonable deadline set by BBM for the Supplier has elapsed without success, if the defect constitutes a specific danger to life, body or health or other protected legal goods in line with Art. 823 BGB, and it would be unreasonable to wait for the supplementary performance to be carried out by the Supplier because of this danger. If possible, the Supplier shall be informed about the danger and the impending remedy to give it the possibility of an immediate removal of the defect and the associated risk situation.

8. By way of derogation from § 438 Abs. 1 Nr. 3 BGB the limitation period covers three years. For all other cases the statutory limitation period shall apply.

IX. Exemption

The Supplier shall hold BBM harmless from all claims made by a third party against BBM – no matter the legal reason – because of a defect in quality or a defect of title or another fault in goods delivered by the Supplier, and shall reimburse BBM for the necessary costs of the related litigation or of any recalls. With respect to claims for damages by third parties, this only applies if the Supplier is responsible for the occurrence of the damage.

X. Setoff and retention rights, prohibition of assignment, security

1. BBM shall be unrestrictedly entitled to the setoff and retention rights permitted by law. The Supplier may not assign any claims arising from the business relationship with BBM to third parties. The provisions of Art. 354a German Commercial Code (HGB) shall remain unaffected. The Supplier may only set off those claims that are undisputed, legally established or recognized by BBM. The Supplier shall be entitled to exercise a right of retention only insofar as its counterclaim is based on the same contractual relationship.

2. If advance payments are agreed to, the Supplier shall issue to BBM an advance payment suretyship (Bürgschaft) as security for the repayment of the advance payment plus interest. This suretyship must be an unconditional, unlimited, irrevocable and directly enforceable suretyship "at first demand" issued by a financial institution or credit insurer approved in the European Union and with general jurisdiction in the Federal Republic of Germany, subject to substantive German law. The suretyship shall contain the obligation to waive the plea to dispute and the right of depositing. Furthermore, the suretyship must include the obligation to waive the plea of setoff unless the Supplier's counterclaim is undisputed or has been established in a legally binding way. The advance payment suretyship shall be returned when the advance payment plus interest has been fully used up in due payments or when the Supplier has paid back advance plus interest in full. BBM shall be entitled to reject a guarantor proposed by the Supplier for good reason.

XI. Special rights of withdrawal

1. Independent of its legal rights of withdrawal, BBM shall be entitled to withdraw from the contract, if the Supplier stops making payments, or applies for the initiation of insolvency or comparable legal proceedings, or if such proceedings have been initiated or if the opening of such proceedings has been rejected due to insufficient assets.

2. Force majeure or other circumstances BBM is not responsible for and that are unavoidable and unforeseeable for BBM entitle BBM – without prejudice to any other rights of BBM – to withdraw from the contract in whole or in part, as far as the utilization of the goods in

the contractual purpose becomes impossible or if the contractual obligations become economically unacceptable to BBM due to such circumstances.

3. If a customer of BBM legitimately withdraws from the contract, and if this withdrawal is not a result of circumstances BBM is responsible for, BBM shall be entitled to withdraw from the contract with the Supplier, provided that BBM concluded the contract in order to fulfil its obligations towards its customer and has no other opportunity to otherwise sell or use the goods in question.

4. Regarding the consequences of the withdrawal from the contract the statutory legal provisions shall apply.

XII. Confidentiality

1. The Supplier must not disclose any information - including drawings, documents, findings, patterns, production resources, models, data carriers, etc. provided by BBM - to third parties (including subcontractors) without BBM's prior written consent, and must not use these for purposes other than those established by BBM. This shall also apply to any copies. This obligation does, however, not apply to information that the Supplier was or will be entitled to know upon receipt thereof without the obligation of keeping secrecy, or which - without a breach of contract by either party - is or will become generally known or the Supplier has received permission in writing to use this information in another way.

2. The Supplier may not advertise its business relationship with BBM without BBM's prior written consent.

3. BBM retains the property and all other rights (e.g. copyrights) to the information provided by it, in particular that contained in the design plans. Reproductions may only be made with the prior written approval of BBM. The ownership in reproductions and drawings of design plans made by the Supplier shall pass to BBM upon production. It is herewith agreed between the Supplier and BBM that the Supplier safely stores the reproductions and drawings for BBM. The Supplier has to keep, maintain and insure the documents, objects, reproductions and drawings created by it carefully and at its own cost, and to return them or destroy them at any time upon BBM's request. The Supplier shall not be entitled to any right of retention for whatever reason. The Supplier must confirm in writing the complete return or destruction of the above.

4. In the event of a breach of the obligations as per this section **XII.** a penalty to the amount of 25,000 EUR shall be due immediately for each case of infringement, excluding continuation of offence. The Supplier reserves the right to have the reasonableness of the amount of the penalty reviewed by a court of law. Any contractual penalties paid shall be set off against claims for damages.

XIII. Place of performance, place of jurisdiction, applicable law, miscellaneous

1. If not otherwise expressly agreed, BBM's headquarters shall be the place of performance.

2. Mülheim/Ruhr shall be the exclusive place of jurisdiction for all disputes arising from the delivery relationships. BBM shall also be entitled to sue the Supplier at its headquarters.

3. The laws of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Rules of the German International Private Law shall be excluded as far as legally permissible.

4. The contractual language shall be German. Hence, any and all business correspondence must be carried out in German.

5. In the event that one of the provisions of these Purchase Conditions or a part thereof is or becomes invalid, the remaining provisions and/or the remaining part of the provision shall remain valid. Insofar as the contract or these Purchase Conditions contain a regulatory gap, those legally valid regulations shall be deemed to have been agreed to close the gap, which the contractual partners would have agreed in line with the economic purpose of these Purchase Conditions, if they had been aware of this regulatory gap.