

General terms and conditions of purchase of b+m surface systems GmbH

(referred to below as "b+m")

1 Regulating conditions

The current and future legal relationships between the supplier and b+m are exclusively subject to these business terms and conditions in their current version and any other future agreements. Other general terms and conditions of the supplier will not be applicable even if they are not specifically invalidated in any individual case. If b+m accepts goods or other services without express objections, or if payments are made by b+m without specifically rejecting the supplier's terms, this does not infer that b+m has accepted the general terms and conditions of the supplier.

2 Orders

1. All statements such as orders and releases and their revisions and supplements are only binding if b+m has issued or confirmed them in writing. The written form also includes data transmission, particularly by fax or email by machine-readable data media. The requirement for the written form can only be modified in writing.
2. Tenders issued on request are free of charge and non-binding for b+m. The supplier's tender will remain binding for 30 days after receipt by b+m.
3. b+m may cancel an order if the supplier does not accept the order within two weeks, or one week if the order was sent electronically. Release orders become binding if the supplier has not rejected them within two weeks, or one week after receipt if the release was sent electronically.
4. b+m may require changes in the design and model of the object of delivery if this is reasonable for the supplier. The effects on additional and minimum costs and delivery dates must be regulated in a reasonable form.
5. The supplier agrees to maintain the required capacity for manufacture of the objects of delivery for the spare parts market, so that b+m will be able to supply spare parts to end customers and consumers for up to 15 years. The parties to this agreement will specify the relevant periods in consultation with b+m's customers. If the supplier is unable to provide the required capacity, whether for reasonable or unreasonable circumstances (e.g. bankruptcy or insolvency), the supplier will ensure provision of the required capacity by third parties in consultation with b+m and agrees to grant any required licences and provide technical support. The conditions agreed between the parties will continue to be applicable for deliveries for the spare parts market.

3 Prices, shipping, packaging

1. The agreed prices are fixed prices and are understood to include – in addition to the current statutory value-added tax – costs for packaging, freight and transport to the shipping point or place of use specified by b+m (DDU – delivered duty unpaid as defined in INCOTERMS 2000). If in exceptional cases a price "ex stock" or "ex works" is agreed, b+m will only pay the most favourable freight costs. In every case the supplier will pay costs incurred up to transfer to the shipper, including loading.
2. Shipping is at the risk of the supplier. The risk of deterioration, including accidental loss, remains with the supplier until delivery to the delivery address or place of use specified by b+m, unless otherwise agreed in specific cases.
3. The supplier agrees to the return of all packaging materials.

4 Payment

1. Payment will be made by the 25th of the following month with 2% discount, or by the 25th of the next month net after receipt and inspection of the goods as specified in the contract and receipt of a correct and confirmed invoice. If deliveries are accepted earlier, the due date of payment will be in accordance with the originally agreed date of delivery.
2. Payments by b+m do not confirm the accuracy of the accounting.
3. In case of faulty delivery, b+m is entitled to withhold payment until the fault has been corrected. If payments have already been made for the faulty delivery, b+m is entitled to withhold any other payments due in the amount of the payments previously made.
4. Without prior written approval by b+m, which may not be rejected without good reason, the supplier is not entitled to transfer invoices due from b+m to third parties or have them paid to third parties. Approval will be considered granted in the presence of extended retention of title.
5. Invoices from the supplier must be submitted to b+m in two copies (duplicate marked) and must include the supplier number, number and date of order or purchase decision and release, supplementary data of the person ordering (allocation), delivery location, number and date of waybill, quantity and part identification number with index and the contractually specified price per unit of the goods.

5 Proof of origin, export restriction

1. On request by b+m, the supplier must provide the origin of goods supplied, the manufacturer or the supplier's suppliers at any time. The supplier must provide complete and signed proofs of origin when requested by b+m.
2. The supplier must inform b+m voluntarily if the supplied goods are subject to complete or partial export restrictions under German law or any other law.

6 Delivery date and deadlines, delayed delivery

1. The schedules specified in the order are binding.
2. The deciding factor for compliance with the delivery schedule or the delivery deadline is receipt of the goods at the delivery address or place of use as specified by b+m.
3. If the supplier realises that the agreed schedule cannot be maintained for any reason, b+m must be informed immediately of the reasons and the duration of the delay by electronic means, and the supplier must take all necessary action at the supplier's expense to prevent delay and avoid any damages caused by the delay. At the request of b+m or the company's representative, the supplier is required to provide information on the status of production of ordered goods .
4. In case of delivery before the agreed date, b+m reserves the right to return the goods at the supplier's expense or to refuse acceptance. If a delivery is made before the specified time and it is not returned or rejected, the goods will be stored until the scheduled delivery date by b+m at the supplier's expense and risk.
5. b+m will only accept partial deliveries when specifically agreed in advance. When partial deliveries are made by agreement, the remaining quantity due for delivery must be listed in the delivery documents.
6. In the event of delay, the supplier is required to reimburse b+m for immediate and consequential damages caused by the delay. On expiry of a second deadline without result, b+m is also entitled to terminate the contract in cases where the services provided by the supplier are not in accordance with the contract, and to demand compensation for damages or compensation instead of the service, provided that the legal requirements are fulfilled. For the rest, Section 323, Parts 2 to 6 BGB [German Civil Code] remains in force. The acceptance of delayed delivery or services does not imply waiver of demands for compensation.

7 Force majeure

1. Force majeure, legal industrial action, insurrection, government action and other unforeseeable, unavoidable and serious events release the contractual parties from their obligations for the duration of the disturbance and their effects. The supplier is obliged to supply the required information to the extent feasible and to adjust his obligations to the changed circumstances in good faith.
2. b+m is fully or partially released from the obligation to accept the ordered delivery and is entitled to terminate the contract if delivery is no longer feasible for b+m - with reference to business reasons - as a result of delays caused by force majeure or legal industrial action.

8 Quality and documentation

1. For his delivery, the supplier must comply with the accepted rules of science and technology, the safety regulations, any separately agreed quality assurance requirements, and the specified technical data. Modifications to the object of delivery and the production process require prior approval in writing by b+m.

2. The supplier must implement and update as required a suitable, documented quality assurance system in accordance with the current state of the art. The supplier specifically assures that at the start of delivery to b+m it will be certified in accordance with DIN 9000ff or a comparable quality assurance system.
3. In the case of parts specifically identified in the technical documentation or by separate agreements, the supplier must also record in separate drawings when, how and by whom the objects of delivery have been tested with reference to the characteristics requiring documentation and the results of the required quality tests. The test reports must be stored by the supplier for 20 (twenty) years and submitted to b+m in writing on demand. Subsuppliers to the supplier must be subject to the same requirements to the extent permitted by law.
4. Insofar as authorities who are responsible for safety, approval, commissioning, environmental protection etc. require information on the production processes and test documentation of b+m in order to check specific requirements, the supplier is required to provide assistance to the extent reasonably possible.

9 Obligation of inspection and notice of defects

1. The supplier will carry out suitable dispatch inspections before shipping goods, and will take samples from every delivered batch and will store them for fifteen (15) years.
2. b+m will conduct a receiving inspection of delivered contractual products, which will include only an identity check for obvious defects or damage, shipping damage and a check of quantity. No additional testing will be conducted. If faults are detected, b+m will inform the supplier within ten (10) days of discovery of the fault.
3. Otherwise, the contractual products will only be inspected during production testing and final inspections. If faults are detected, b+m will inform the supplier within ten (10) days of discovery of the fault.

10 Liability for faults

1. If faulty goods are delivered, the supplier must be given the opportunity of repair or replacement before start of production (processing or installation), unless this is not feasible for b+m. If the supplier cannot do this or if the goods are not replaced immediately, b+m may terminate the contract and return the goods at the supplier's risk and expense or demand a reduction. In urgent cases, b+m may carry out repairs in consultation with the supplier or have them done by a third party. The supplier will be responsible for all expenses involved. The right of b+m to demand compensation for damages or reimbursement for unavoidable expenses will not be affected.
2. If the fault is not detected until the start of production in spite of compliance with the obligation in accordance with no. 9 (Obligation of inspection and notice of defects), b+m may demand additional compensation for expenses under the rule in part 1.

3. The supplier's liability for faults expires 24 months after transfer of risk.
4. The supplier is required to compensate b+m for all damages incurred by the delivery of faulty parts to b+m and will hold harmless and defend b+m against claims for damages by third parties resulting from the delivery of faulty parts and resulting consequential damages at the initial request if they are the fault of the supplier.

11 Liability

Unless otherwise specified elsewhere in these terms and conditions, the supplier is required as follows to pay compensation for damages incurred by b+m immediately or subsequently as the result of a faulty delivery, for violation of legal safety regulations or any other legal reasons that can be considered the fault of the supplier.

1. If b+m is subject to liability claims from third parties not resulting from fault based on non-obligatory law, the supplier will hold b+m harmless to that extent and will defend b+m from such claims at the first demand to the extent that b+m would be liable. The principles of Section 254 German Civil Code will be applied as appropriate to the compensation for damages between b+m and the supplier. This also applies in the event of direct claims on the supplier.
2. The obligation for replacement is not applicable if b+m effectively restricts liability to its customers. b+m will also attempt to apply limitations of liability to the extent permitted by law in favour of the supplier.
3. The supplier will be liable for actions by b+m for prevention of damages (e.g. recalls) to the extent required by law.
4. b+m will inform and consult with the supplier immediately and in full if b+m wishes to apply the above regulations. b+m must give the supplier an opportunity to examine the cause of the damages immediately. The contracting parties will come to an agreement about the action to be taken.
5. The liability of b+m – regardless of the legal basis – is restricted to damages caused by b+m or representatives or contractors of b+m by intent, gross negligence or negligent violation of obligations that are important to fulfilling the purpose of the contract.
6. In cases of minor negligence, the liability of b+m is restricted to the value of the damages typical for comparable business of this type that were foreseeable at the start of the contract or at the latest at the start of the violation of the obligation.
7. Claims for damages under the product liability law and resulting from injury to life, body or health remain unaffected.

12 Property rights

1. The supplier guarantees that the manufacture of the contractual products does not violate the property rights of third parties or involve unauthorised usage of property rights in any form

2. The supplier holds b+m and its customers harmless from all claims by third parties resulting from the usage of property rights at the initial demand. The supplier's defence is applicable to all applications involving b+m in this connection.
3. This does not apply to the extent that the supplier has manufactured the objects of delivery in accordance with drawings, models or equivalent descriptions or requirements supplied by b+m and does not know or cannot know that this violates property rights involved in products developed by the supplier.
4. The contracting parties will inform b+m of the usage of own published and unpublished and licensed property rights and registrations of property rights in the object of delivery.

13 Confidentiality

1. The supplier is required to keep confidential documents, information and data with reference to b+m that are acquired in connection with or during the cooperation regarding the object of the contract at least with the care of a careful business person as well as the relevant privacy regulations.
2. The supplier is required to subject employees and subcontractors to similar obligations; on demand by b+m, the supplier will confirm compliance with these obligation in writing.
3. The supplier is permitted to advertise with the business connections of the contracting parties only after prior written approval by b+m. The supplier agrees to use the company name or trade mark of b+m only with prior written approval.

14 Usage of production equipment and confidential information owned by b+m

Models, dies, templates, samples, moulds and other production equipment, as well as confidential information, provided to the supplier by b+m or paid for by b+m must not be made available to third parties or otherwise made available for supply to third parties or in any other way, e.g. by usage or exploitation of such objects, without prior written approval from b+m. b+m retains all ownership and property rights of any kind of these objects. Without giving reasons, b+m may request the immediate return of production equipment and confidential documentation.

15 Hazardous substances

If the object of the contract is a substance or a preparation that has hazardous properties as defined by the hazardous materials regulations or if such properties are generated when working with this substance, the supplier must classify, package and label the object in accordance with the applicable regulations of the hazardous materials regulations.

With initial manufacture of samples and with initial series manufacture a current, dated material safety data sheet must be prepared in German and English, which must include the place of usage and the purpose. The material safety data sheet must be resubmitted without demand whenever the substance or preparation is modified and whenever the material safety data sheet is revised by the supplier, and in any case every three years. If there are special regulations for use, b+m must be informed separately in writing, and b+m must be consulted in the application of the substance or preparation with reference to the local conditions. The regulations, particularly the obligations of the suppliers under the hazardous materials regulations in the version current at the time of delivery, remain unaffected.

16 General Terms

1. If the assets of a party are subject to an application for insolvency, the other party is free to terminate the unfulfilled part of the contract.
2. The international trading clauses conform to INCOTERMS 2000, unless specifically agreed otherwise in writing.
3. The laws of the Federal Republic of Germany apply exclusively with exclusion of conflict of laws and exclusion of the United Nations convention on contracts regarding international sale of goods (UN purchasing law).
4. The place of fulfilment for deliveries and payments is 36132 Eiterfeld, Germany.
5. The court of jurisdiction at the choice of b+m is Fulda or the court of jurisdiction of the supplier.