



## Standard Terms and Conditions of Purchase

## 1. Scope

- 1.1. These Standard Terms and Conditions of Purchase (hereinafter "Standard Terms of Purchase") shall apply to all contractual relations of Bühler Technologies GmbH (hereinafter "Bühler") with entrepreneurs as defined in § 14 BGB (Bürgerliches Gesetzbuch – Civil Code ("BGB")), legal entities under public law, or special funds under public law (hereinafter "Supplier"). In particular, these Standard Terms of Purchase shall apply to contracts for the sale and/or supply of movables ("goods").
- 1.2. These Standard Terms of Purchase shall apply exclusively. Any deviating, conflicting or additional terms and conditions of Supplier will not be incorporated in the contract unless and except to the extent their applicability has been expressly approved by Bühler in written form. These Standard Terms of Purchase shall also apply if Bühler, notwithstanding its knowledge of any deviating, conflicting or additional terms of Supplier, executes the contract or accepts a delivery from Supplier. These Standard Terms of Purchase are accepted through acceptance or acknowledgment of Bühler's order but no later than upon Supplier dispatching the goods.
- 1.3. These Standard Terms of Purchase as amended from time to time shall operate as master agreement for any future contracts and/or purchases of movables made with the same supplier without a requirement for Bühler to invoke their application in each single case, and Bühler will communicate any amendments to Supplier without undue delay.
- 1.4. Any individual agreements made with Supplier from time to time (including any subsidiary agreements and amendments) shall override these Standard Terms of Purchase in any event. Unless there is proof to the contrary, a written contract or Bühler's written order is definitive for the substance of any such agreements.

## 2. Offers

- 2.1. Supplier shall prepare offers at no cost to Bühler.
- 2.2. If an offer, a confirmation or another notice from Supplier qualifies as offer within the meaning of § 145 BGB, Bühler may accept the offer within two weeks of receipt. Bühler's dispatch of the notice of acceptance is decisive for the timeliness of acceptance.

## 3. Orders/acknowledgments of order

- 3.1. No orders and related modifications are binding unless Bühler has issued or approved them in written form.
- 3.2. Supplier agrees to acknowledge Bühler's orders in written form within three business days from the date of the order. Bühler's receipt of the acknowledgment of order is decisive for the timeliness of acknowledgment. If Bühler's order qualifies as offer within the meaning of § 145 BGB, the acknowledgment of order Bühler receives after that period shall be considered a new offer within the meaning of § 150 (1) BGB and shall be subject to acceptance by Bühler.

## 4. Prices/terms of payment/invoice data

- 4.1. The price stated in the order shall be binding.
- 4.2. Except as agreed otherwise, prices stated in the order shall include all types of performance and ancillary performance rendered by Supplier (for example the assembly or installation of machinery wholly or in part) as well as all incidental costs (for example proper packaging, shipping costs including insurance, if any). Prices shall be plus statutory VAT as applicable from time to time, to be presented separately.
- 4.3. Except as agreed otherwise, invoices are payable within 14 days with a 3% early-payment discount or within 30 days net from delivery of the goods and receipt of the invoice. Payment terms and early-payment discount periods begin to run on receipt of the invoice but not before receipt of the goods or, in the case of services, acceptance of the services, and if the scope of performance includes documentation or similar material, not before such documentation or material has been delivered to Bühler in conformity with the contract. Receipt of the payment transfer order at Bühler's respective credit institution shall be sufficient for a payment owed to Bühler to be in time.
- 4.4. Payments are made on the proviso of proper delivery and correct prices and calculations. Bühler may withhold its payables as long as it has any claims against Supplier as a result of incomplete or faulty performance.
- 4.5. All acknowledgments of order, delivery documents and invoices of Supplier are to identify Bühler's order number and the origin of the goods, the commodity code, Bühler's item number and, if necessary, the export licensing requirements per item. Invoices are to be sent to Bühler in single copy, preferably by email, and in conformity with legal requirements, in particular VAT requirements. If any of such information is missing or if the invoice is issued faultily, Supplier is obliged to correct the invoice. If this delays Bühler's handling in the ordinary course of business, the payment periods stated in clause 4.3 of these

Standard Terms of Purchase shall be extended by the length of the delay.

- 4.6. Bühler shall owe no interest on maturity. The occurrence and effects of default on the part of Bühler shall be governed by the law, provided, however, that Supplier, in derogation from the law, has sent a written warning.

### 5. Packaging/proof of origin

- 5.1. Except as agreed otherwise, the goods are to be delivered in customary and proper packaging of single-type material allowing recycling or, at Bühler's request, in special packaging to Bühler's instructions. Supplier shall be liable for any damage that results from deficient packaging.
- 5.2. Except as notified by Supplier in written form, Bühler shall work on the understanding that the goods delivered by Supplier are under no licensing requirements or export restrictions or other export requirements under German, European or US law. If there are any restrictions or if restrictions arise, Supplier is obliged to notify Bühler in written form without undue delay.
- 5.3. At Bühler's request, Supplier is obliged to send Bühler the necessary declarations on the origin of the goods for customs purposes. Supplier shall be liable for any disadvantages that may arise to Bühler as a result of a non-compliant or delayed supplier declaration. If necessary, Supplier shall deliver information in support of the origin of the goods on a form affirmed by the customs office in charge of Supplier.

### 6. Delivery/delivery periods/ scope of delivery/passing of risk

- 6.1. Except as agreed otherwise, delivery shall be "free domicile" to the receiving location or designated station indicated in the order. The acceptance and/or payment of any performance does not operate to acknowledge that the performance is in conformity with the contract.
- 6.2. Supplier shall be bound by the delivery periods or dates stated in Bühler's order. Delivery must not be ahead of schedule unless with Bühler's prior written consent. Delivery periods begin to run on the date of the order.
- 6.3. The receiving location designated in the order is to be given early notice of the dispatch of the goods, to be given no later than two business days prior to delivery. On dispatch of all consignments, prompt advice of dispatch is to be sent to Bühler in duplicate, indicating quantities and weights. Supplier shall comply with any shipping requirements notified by Bühler.

- 6.4. The delivery note is to contain the item number, item name and order number. If possible, such information is to be additionally encoded by way of barcoding. Bühler will provide Supplier with the relevant specifications upon request.

- 6.5. No partial deliveries are allowed unless with Bühler's prior written consent.

- 6.6. When circumstances arise or become evident that disallow Supplier to deliver within the delivery period or by the delivery date, Supplier is obliged to notify Bühler in writing without undue delay, communicating the expected length of the delay. If the contract allows determining the day on which delivery is to be made, Supplier will be in default on the lapse of that day without Bühler being required to send a reminder. If Supplier is in default of delivery, Bühler has all statutory rights, including the right to withdraw from the contract and the right to claim damages in lieu of performance after a reasonable period of grace has expired and been of no avail.

- 6.7. In the case of default of delivery, notwithstanding Bühler's statutory rights, Bühler may charge a contractual penalty equal to 1% of the net value of the goods of the late consignment for each complete or incomplete week of the default of delivery but no more than 5% of the net value of the goods in the aggregate. The contractual penalty is to be set off against the default damage to be compensated by Supplier.

- 6.8. The risks of accidental deterioration and accidental loss do not pass to Bühler until the goods are delivered to the receiving station designated by Bühler, including if the Parties have agreed on dispatching the goods. If delivery requires acceptance, acceptance shall be decisive for the passing of risk. In this case, an acceptance certificate is to be drawn up, to be signed by the two parties.

### 7. Spare parts

If Supplier decides to discontinue the production of spare parts needed for the goods delivered to Bühler, Supplier shall notify Bühler in writing without undue delay after Supplier's decision but no later than three months prior to actual discontinuation.

### 8. Warranty

- 8.1. Except as stipulated otherwise below, the statutory regulations shall apply to any defects in quality or title in the goods (including shipment of the wrong goods or short shipment or improper instructions for the assembly, operation or handling of the goods) and to any other breach of duty by Supplier.



- 8.2. The goods are to be delivered free from defects in quality or title and must be in conformity with generally accepted rules of engineering and the contractually agreed qualities, standards and the provisions on industrial health and safety as well as other provisions. In particular, in accordance with statutory regulations, Supplier shall be liable for the goods to have the agreed quality when the risk passes to Bühler. In any case, the product specification addressed in the contract or incorporated in the contract in the same way as these Standard Terms of Purchase shall be deemed to be agreements on the quality of the goods, whether the product specification has been Bühler's or Supplier's.
- 8.3. In any case, Bühler's duty to inspect the goods and to notify defects (§§ 377, 381 HGB (Handelsgesetzbuch – German Commercial Code, "HGB")) does not arise until Bühler has received the goods at the receiving location designated in the order as well as proper advice of dispatch. Bühler's inspection duty is limited to defects that become evident by visual examination during Bühler's incoming goods inspection and by sampling during Bühler's quality assurance process (for example, transport damage, shipment of the wrong goods or short shipment). A complaint is deemed to have been made in time if it is received by Supplier within 10 calendar days of delivery and proper advice of dispatch in the case of evident defects or within 10 calendar days of detecting a defect that was not evident notwithstanding the proper examination of the goods. Acknowledgment of excess shipments as being in conformity with the contract is subject to express and written acknowledgment. In the case of a defect, if subsequent performance by Supplier fails, Bühler shall have no duty to inspect and notify defects as part of the performance rendered by Supplier for purposes of subsequent performance. If delivery is subject to acceptance, Bühler shall have no duty to inspect the goods. The values determined in the incoming goods inspection are decisive for the measurements, weights and quantities of a consignment.
- 8.4. If Supplier, within reasonable time allowed by Bühler, fails to render subsequent performance by remediation of the defect or by delivering an item that is free from defects (replacement) as Bühler may opt, Bühler may remedy the defect and claim compensation for its necessary expenditures or a corresponding advance payment. Bühler has no right to remedy the defect where Supplier would be entitled to refuse subsequent performance according to statutory regulations.
- 8.5. Supplier shall bear the cost it may spend for examining and remedying the defect (including any cost of deinstallation and reinstallation), even if it turns out that there is no actual defect. Bühler's liability for damages in the case of an unjustified remediation request remains unaffected, provided, however, that Bühler shall not be liable unless Bühler recognized or failed to recognize through gross negligence that there was no defect.
- 8.6. Supplier shall be liable for any replacements delivered or remedial work carried out by Supplier to the same extent as for the item delivered originally.
- 8.7. In derogation from § 438 (1) point 3 BGB, the general period of limitation for claims based on defects in quality or title shall be three years from delivery. If the Parties have agreed that delivery shall be subject to acceptance, the period of limitation begins to run on acceptance. Once Supplier receives Bühler's written notice of a defect, the limitation period of any warranty claims shall be suspended until Supplier dismisses Bühler's claims or declares the defect to have been remedied or refuses to continue talks about Bühler's claims. In the case of remediation of the defect or replacement, the warranty period for the parts replaced or remedied begins to run anew unless Bühler, considering Supplier's behaviour, has reason to believe that Supplier, without feeling obliged, remedied the defect or made the replacement only for reasons of fairness in trade or similar reasons.
- ## 9. Liability/insurance cover
- 9.1. In accordance with statutory regulations, Supplier shall be fully liable for all loss and damage including any consequential damage arising through breach of duty or from any other cause in law. Where Supplier has a compensation duty, Supplier, as against outside parties, shall indemnify Bühler against any third-party claims, including, without limitation, any damage to things produced and sold by Bühler (if the defect has additional consequences, qualifying as "weiterfressender Mangel").
- 9.2. Where Supplier is responsible for product damage, Supplier is obliged to indemnify Bühler against third-party damage claims upon Bühler's first request if the cause of the damage is within Supplier's sphere of control and organization and if Supplier is liable as against outside parties. As part of its liability for product damage, Supplier is also obliged to compensate Bühler for any expenditures under §§ 683, 670 BGB or §§ 830, 840, 426 BGB that Bühler may incur as a result of or in connection with a recall campaign to be carried out by Bühler. As far as practicable and reasonable, Bühler will notify Supplier of the substance and scope of the recall measures to be carried out by Bühler and will allow Supplier to comment. Any other legal claims remain unaffected.
- 9.3. Supplier shall take out and carry third-party liability insurance at customary terms and conditions providing for minimum coverage of 5 million euros per claim of property damage/personal injury, and where Bühler has any further damage claims, such claims remain unaffected.
- 9.4. In accordance with the following provisions, Supplier takes responsibility for the products delivered by Supplier to not infringe any IP rights owned by others

(for example, patents, patent filings, utility models, designs, copyrights). Supplier is obliged to indemnify Bühler against all claims that are brought against Bühler by third parties on grounds of such infringements, and Supplier is obliged to compensate Bühler for all necessary expenditures in connection with such claims. No such entitlement arises where Supplier can prove that the infringement has not been in Supplier's control and that Supplier, applying commercial diligence, ought not to have recognized the infringement at the time of delivery.

### 10. Reservations of title/non-disclosure

- 10.1. Any drawings and other supporting material of Bühler as well as any items (for example, means of productions or tooling) that are made available to Supplier or the cost of which are paid by Bühler may be used for supplies to Bühler only. Bühler reserves the related rights of proprietorship, copyrights and IP rights.
- 10.2. Until 2 years after the end of the contract, Supplier shall maintain secrecy about any supporting material and information (excluding any information in the public domain) that has been made available by Bühler and Supplier may not unless with Bühler's prior written consent disclose or publish or use or reproduce or have others use or reproduce such material or information or the substance thereof.
- 10.3. Supplier agrees to apply due care in handling any items made available by Bühler and to carry reasonable insurance for and, when necessary, to service such items. In the absence of any written agreement to the contrary, the Parties shall bear the cost of maintenance and repair in equal halves. However, to the extent such costs are due to defects in such items produced by Supplier or improper handling by Supplier or Supplier's employees or any other persons employed by Supplier in the performance of its obligations (Erfüllungsgehilfen), Supplier shall bear the costs in their entirety. Supplier is obliged to notify Bühler in writing without undue delay of any damage to such items that is more than insignificant. If anything made available by Bühler is being processed or combined or irrevocably merged with other things that are not owned by Bühler, Bühler becomes the co-owner of the new thing at the ratio of the value of the thing made available by Bühler relative to the other things at the time of processing, combining or merging.
- 10.4. If the parties' negotiations do not result in the conclusion of a contract or if the contractual relationship is being terminated, Supplier, without being asked and without undue delay, shall return all supporting material and items made available by Bühler and shall return any reproductions that may have been prepared by Supplier, once it no longer needs such material and items in the course of ordinary business.

- 10.5. Any reservations of title by Supplier will only apply to the extent they refer to Bühler's obligation to pay the products for which Supplier has made the reservation of title. In particular, any extended or renewed reservations of title are inadmissible.
- 10.6. Bühler has the right to resell Supplier's supplies in the course of ordinary business.
- 10.7. Supplier may not without Bühler's prior written consent mention Bühler's company name for promotional purposes in business letters, lists of customers, advertising material or other publications.

### 11. Set-off/right of retention/right to withhold performance/assignment

- 11.1. Bühler shall be fully entitled to exercise the statutory right to offset or retain payments or withhold performance.
- 11.2. Excluding Supplier's payment claim, Supplier may not unless with Bühler's prior written consent transfer to any third party any rights or obligations that may attach to the order or the execution of the order. Bühler has the right to assign its claims.

### 12. Written form

The effectiveness of any legally relevant notifications and declarations to be made by Supplier to Bühler after the conclusion of a contract (for example to set a time or send reminders or withdraw from the contract) shall be subject to written form. To comply with written form for purposes of these Standard Terms of Purchase, transmission of characters by way of unsigned emails shall be sufficient.

### 13. Choice of law/place of performance/place of jurisdiction

- 13.1. The law of the Federal Republic of Germany shall apply to the contractual relationship between Bühler and Supplier on an exclusive basis, to the exclusion of German private international law and the Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG).
- 13.2. Bühler's place of business shall be the place of performance for payments and deliveries.
- 13.3. Düsseldorf shall be the place of jurisdiction for all disputes under or in connection with the contractual relationship between Bühler and Supplier. Bühler also has the right to sue Supplier at Supplier's general place of jurisdiction.

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