



# General Terms and Conditions of Purchase of BM Piping GmbH & Co. KG (As of: 04/18)

## Section 1 Scope of Application, Form

(1) These General Terms and Conditions of Purchase (AEB) apply to all business relationships with our business partners and suppliers ("sellers"). Deviating, contradictory or supplementary General Terms and Conditions of the seller shall not be recognized unless we have expressly agreed to them in writing in each individual case.

(2) Legally relevant statements and indications of the seller with respect to the contract (e.g. setting of a deadline, notification of a defect, withdrawal or reduction) shall be in writing, i.e. in written or textual form (e.g. letter, email, fax). Statutory formal requirements and further proof, especially in cases of doubt about the legitimacy of the declarant remain unaffected.

## Section 2 Conclusion of Contract, Cost Estimates

(1) Our order is binding at the earliest with its written submission. The seller is obliged to confirm our order in writing within a period of 2 weeks (acceptance). A late acceptance is considered as a new offer and requires acceptance by us.

(2) Unless otherwise expressly agreed, the offers and cost estimates of the seller are free of charge.

## Section 3 Delivery Period and Default

(1) Our delivery period specified in the order is binding. The seller is obligated to notify us immediately in writing if he is not able to comply with agreed delivery times for whatever reason.

(2) If the seller is in default, we may demand - in addition to any further legal claims - a flat reimbursement of our default damage in the amount of 1% of the net price per completed calendar week, but no more than 10% of the net price for the entire order. We reserve the right to prove that a higher damage occurred. The seller reserves the right to prove that no damage whatsoever was incurred, or only a considerably smaller one.

## Section 4 Performance, Delivery, Transfer of Risk, Default of Acceptance

(1) The seller is not entitled, without our prior written consent, to have the service owed by him performed by third parties (e.g. subcontractors). The seller bears the procurement risk for his performances, unless expressly agreed otherwise in each individual case (e.g. limitation to stock).

(2) The delivery takes place within Germany "free of charge" at the place specified in the order. The respective destination is also the place of performance for the delivery and any subsequent performances (debt to be discharged at creditor's domicile).

(3) The delivery shall be accompanied by a delivery note specifying the date (issue and shipment), content of the delivery (item number and quantity) and our order code (date and number). If the delivery note is missing or incomplete, we are not responsible for the resulting delays in processing and payment. Separate from the delivery note, we are to be sent a corresponding shipping notice with the same content.

(4) The risk of accidental loss and accidental deterioration of the item passes to us upon delivery to the place of performance. Insofar as an acceptance has been agreed, this is decisive for the transfer of risk.

(5) In the event of our default of acceptance, the legal regulations apply. The seller must also offer us expressly his services if a specific or determinable calendar time has been agreed for an action or participation on our part (e.g. provision of material). If the contract relates to an unacceptable item to be produced by the seller (one-off production), the seller is only entitled to further rights if we are committed to participation and are responsible for the failure to cooperate.

## Section 5 Prices and Terms of Payment

(1) The price stated in the order is binding. All prices are exclusive of statutory Value Added Tax if this is not shown separately.

(2) Unless otherwise agreed in each individual case, the price includes all services and ancillary services of the seller (such as installation, mounting) and all incidental costs (e.g., proper packaging, transport costs including any transport and liability insurance).

(3) The agreed price is due for payment within 30 calendar days as of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the seller grants us 3% discount on the net amount of the invoice. In the case of bank transfer, the payment is made on time if our bank transfer order is received by our bank before the end of the payment period; we are not responsible for delays by the banks involved in the payment transaction.

(4) We do not owe any maturity interest. For the delay of payment, the legal regulations apply.

## Section 6 Confidentiality and Reservation of Property Rights

(1) We reserve the right of ownership and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual service and to be returned to us after completion of the contract. The documents must be kept secret to third parties, even after the contract is completed. The obligation to confidentiality shall expire only if and insofar the knowledge contained in the provided documents has become generally known.

(2) The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items that we provided for production to the seller. Such items shall be kept separate at the expense of the seller and adequately insured against destruction and loss unless they are processed.

(3) Any processing, mixing or connection (further processing) of provided items is made for us by the seller. The same applies to further processing of the delivered goods by us, so that we are considered to be the manufacturer and acquire ownership of the product at the latest with further processing in accordance with statutory provisions.

(4) The transfer of the goods to us must be unconditional and without any consideration for the payment of the price. However, if in individual cases we accept a condition of the seller for the transfer of ownership due to the purchase price payment, seller's reservation of property rights shall expire at the latest upon payment of the purchase price for the delivered goods. In the ordinary course of business, we shall remain authorized to resell the goods prior to payment of the purchase price, subject to advance assignment of the resulting claim (in the alternative, the validity of the simple reservation of property rights extended to resale). In any case, this excludes all other forms of reservation of property rights, in particular extended reservation of property rights to further processing.

## Section 7 Defective Delivery

(1) For our rights in case of material and legal defects of the goods (including wrong and short delivery as well as improper installation, faulty assembly, operating or servicing manual) and other breaches of duty by the seller, the statutory provisions, insofar nothing else is determined below.

(2) In accordance with the statutory provisions, the seller is liable, in particular for ensuring that the goods have the agreed quality at the time of the transfer of risk. In any case, the terms of the product descriptions, which are the subject of the respective contract or are included in the contract in the same way as these General Terms and Conditions of Purchase (AEB), in particular by designation or reference in our order, are deemed to be an agreement on the conditions. It makes no difference whether the product description comes from us, the seller or the manufacturer.

(3) Notwithstanding Section 442 subsection 1 sentence 2 German Civil Code, we fully reserve the right for claims if the defect at the time of conclusion of the contract was unknown to us due to gross negligence.

(4) The statutory provisions (Sections 377, 381 German Commercial Code) shall apply to commercial duty to inspect and to give notice of defects, subject to the following provision: Our obligation to inspect is limited to defects which openly become apparent during our inspection of incoming goods under external inspection, including the delivery documents (e.g. Transport damage, wrong and short delivery) or are recognizable in our quality control in the sampling procedure. Insofar as acceptance has been agreed, there is no obligation to inspect. Moreover, it depends on to what extent an inspection is feasible, taking into account the circumstances of the individual case in the ordinary course of business. Our right to complain about defects discovered later remains unaffected. Notwithstanding our obligation to inspect, our complaint (notification of defects) shall in any case be deemed to be prompt and timely if it is sent within 5 working days from discovery or, in the case of obvious defects, from delivery.

(5) Subsequent performance also includes the removal of defective goods and reinstallation, provided that the goods have been installed in accordance with their nature and intended use or attached to another object. Our legal claim to reimbursement of corresponding expenses remains unaffected. The seller also bears the expenses necessary for the purpose of testing and subsequent fulfilment if it turns out that there was actually no defect. Our liability for damages in case of unjustified removal of defects remains unaffected; however, we are liable only if we have recognized or did not recognize gross negligence that there was no defect.

(6) Without prejudice to our statutory rights and the provisions of subsection 5, the following applies: If the seller meets his obligation to supplementary performance - at our discretion by remedying the defect (rectification) or by delivering a defect-free item (replacement) - within a reasonable period set by us, we can rectify the defect ourselves and demand compensation from the seller for the necessary expenses or require a corresponding advance payment. If the supplementary performance by the seller has failed or is unreasonable for us (e.g. because of special urgency, endangering the operational safety or threatening to incur disproportionate damage), no deadline is required; we will inform the seller immediately of such circumstances if possible beforehand.

(7) Incidentally, in case of legal and quality defects, we are entitled to reduce the purchase price pursuant to statutory provisions or rescind the contract. In addition, we are entitled to compensation and reimbursement of expenses according to the statutory provisions.

#### **Section 8 Supplier Recourse**

(1) Our statutory determined recourse claims within a supply chain (supplier recourse in accordance with Sections 445 a, 445 b, 478 German Civil Code) are not limited to the claims for defects. In particular, we are entitled to demand exactly the type of supplementary performance (repair or replacement) from the seller, which we owe to our buyer in individual cases. Our statutory option (Section 439 subsection 1 German Civil Code) is not restricted by this.

(2) Before we acknowledge or fulfil a defect claim asserted by our customer (including reimbursement of expenses in accordance with Sections 445a subsection 1, 439 subsections 2 and 3 German Civil Code), we shall inform the seller and give a brief explanation of the facts to ask for a written statement. If a substantiated statement is not made within a reasonable period of time and no unanimous solution is brought about, the defect claims actually granted by us shall be deemed due to our customer. In this case the seller is responsible to produce counter-proof.

(3) Our claims arising from supplier recourse also apply if the defective goods have been further processed by us or another contractor, e.g. by incorporation into another product.

#### **Section 9 Manufacturer Liability**

(1) If the seller is responsible for a product damage, he shall indemnify us from claims of third parties insofar as the cause is set in his sphere of control and organization and he is liable externally.

(2) In the context of his exemption obligation, the seller must compensate incurred expenses pursuant to Sections 683, 670 German Civil Code arising out of or in connection with a third-party claim including recalls carried out by us. We will inform the seller - as far as possible and reasonable - about the content and extent of recall measures and give him the opportunity to comment. Further statutory claims remain unaffected.

(3) The seller shall take out and maintain product liability insurance with a flat-rate coverage of at least EUR 1 million per person and at least EUR 10 million per property damage.

#### **Section 10 Limitation**

(1) The reciprocal claims of the contracting parties shall expire in accordance with the statutory provisions, unless otherwise specified below.

(2) Notwithstanding Section 438 subsection 1 no. 3 German Civil Code, the general limitation period for claims for defects is 3 years from the passing of risk. Insofar as acceptance has been agreed, the period of limitation begins with the acceptance. Accordingly, the 3-year limitation period shall also apply to claims arising from defects of title, whereby the statutory limitation period for remunerated claims of third parties (Section 438 subsection 1 No. 1 German Civil Code) remains unaffected; in addition, claims arising from defects of title shall under no circumstances become time-barred as long as the third party is still able to assert right against us, especially in the absence of limitation.

(3) The periods of limitation of the purchase right, including prior extension, apply - to the extent of the law - for all contractual claims for defects. Insofar as we are entitled to non-contractual claims for damages due to a defect, the statutory limitation period applies (Section 195, 199 German Civil Code), unless the application of the limitation periods of the purchase right in individual cases leads to a longer limitation period.

#### **Section 11 Choice of Law and Place of Jurisdiction**

(1) The laws of the Federal Republic of Germany shall apply to these General Terms and Conditions of Purchase (AEB) and all contractual relationships between us and the buyer to the exclusion of international uniform law, in particular the UN Sales Law.

(2) Exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Monheim. However, in all cases, we are also entitled to file a claim at the place of performance of the delivery obligation in accordance with these General Terms and Conditions of Purchase (AEB) or an individual priority agreement or at the general place of jurisdiction of the buyer. Primary legal regulations, especially exclusive jurisdictions, remain unaffected.