

## GENERAL TERMS AND CONDITIONS OF PURCHASE

Last revised on 19.02.2020

### 1 Scope of application

- 1.1 These general terms and conditions of purchase (hereinafter referred to as "**Purchase Conditions**") shall be the basis of each purchase order placed by Braso Technik GmbH, FN 503507 b ("**Buyer**"), and each contract concluded with the Supplier and apply to all legal relationships between the Supplier and the Buyer.
- 1.2 In case of continuous business dealings with a Supplier these Purchase Conditions are also applicable to future contracts, even if not expressly referenced.
- 1.3 Any other general terms and conditions are not applicable, even if they are not expressly rejected by Braso Technik GmbH in individual cases.
- 1.4 The Purchase Conditions in force at the time the contract with the Buyer is concluded are applicable. They are available at <https://www.sunkidworld.com/en/braso-technik-gmbh>.

### 2 Conclusion and alteration of a contract

- 2.1 A buyer inquiry is merely an invitation for the Supplier to submit a binding offer; it is not binding on the Buyer.
- 2.2 A contract is deemed to be concluded when the Buyer accepts the Supplier's offer in writing, with emails being deemed in compliance with the written form requirement for the purposes of these Purchase Conditions.
- 2.3 Before or as the product is delivered / the service is performed, the Buyer may ask for modifications, reductions or extensions, in particular as to the design and finish, with regard to the product/service. The Supplier may refuse to make such modifications, but only where the Supplier's premises are evidently not so equipped as to ensure that the requested additional service can be provided or if the requested modification, reduction or extension would result in inadmissible increased security risks.
- 2.4 Any variation by the Supplier is subject to the written consent of the Buyer.

### 3 Pricing

- 3.1 The price agreed upon by the Buyer and the Supplier shall apply.
- 3.2 The price includes all of the Supplier's expenses for proper performance within the prescribed time limit. Pricing and risk identification are the sole responsibility of the Supplier. In this respect, the Supplier expressly waives voidability on the ground of error, laesio enormis and/or the initial absence or subsequent ceasing to exist of the basis of the transaction.
- 3.3 The price includes in particular all taxes and duties (except VAT), fees and charges, accommodation costs, allowance and travel costs, overtime and extra hours as well as costs for Sunday and holiday work carried out by the Supplier's employees, and costs of insurance and provision of contractual securities and the mark-up for business risk and profit.

### 4 Terms of payment

- 4.1 Unless otherwise agreed in writing, invoices shall be paid within 30 days with a 3 % discount after proper delivery and receipt of invoice. Acceptance of early delivery does not change the payment date.
- 4.2 Payment takes place by means of a transfer of the amount due to the account stated by the Supplier. Cash-on-delivery payment is not permitted. The Buyer has the right to give notes receivable or promissory notes free of expense and discount as payment.
- 4.3 Unless otherwise stated in the order, payments shall generally be made in euros. Expenses for foreign currency exchange and exchange rate differences shall generally be borne by the Supplier.
- 4.4 If the shipment or part of the shipment is defective, the Buyer may withhold the total payment amount until full performance has been given.
- 4.5 Payment of a Supplier's invoice by the Buyer shall not be construed as an acknowledgement that the goods delivered or services provided by the Supplier are free of defects or as waiver of warranty claims or claims for damages.

4.6 The Supplier shall not have any right of set-off or retention with respect to any amounts owed to the Buyer (except claims acknowledged by the Buyer or legally established claims), irrespective of the specified purpose of payment.

## **5 Delivery dates and delivery periods**

5.1 The Supplier undertakes to pay the costs of shipping, packaging and transport insurance.

5.2 All shipments must be accompanied by the appropriate shipping documents / dispatch notes, stating in particular the order number and material number, the detailed contents including a description of goods, quantities, weights, etc., which must be provided by the Supplier at its expense, failing which the Buyer is entitled to refuse the shipment.

5.3 The agreed delivery periods and delivery dates shall be binding and must be met at any rate.

5.4 The date of receipt of the goods by the Buyer is essential for adherence to the delivery date or delivery period. Unless otherwise agreed, delivery shall be made "free to factory". The Buyer may refuse to accept part or all of a delivery on the basis of a random sample test performed by the Buyer.

5.5 When failure to comply with the agreed period of performance or the date of delivery is foreseeable, the Supplier must notify the Buyer that there will be a delay. Despite the notification the Buyer shall be entitled to withdraw from the contract and/or claim damages, following the fruitless lapse of a 14-day period of grace, without prejudice to any further claims.

5.6 The Buyer is not required to accept part deliveries that have not been agreed or deliveries exceeding the agreed quantity or deliveries prior to the agreed date.

5.7 The place of performance is the place where the contract must be performed by the Supplier; unless expressly otherwise agreed it shall be the location of the registered office of the Buyer.

## **6 Force majeure**

6.1 In the case of force majeure, the Buyer will be exempted from the obligations for the duration of such events and to the extent of the effects of such events.

6.2 Force majeure events are events the Buyer cannot foresee or prevent and for which the Buyer cannot be held accountable. Force majeure events include all impacts of the elements such as earthquake, lightning, frost, storm, flooding, but also disruptions of operation, strike, industrial conflict, orders by the authorities and other reasons for which neither contracting party can be held accountable.

## **7 Documentation**

7.1 Irrespective of the obligation to provide comprehensive documentation in German and in English language, the Supplier shall grant the Buyer access to in-house documentation, inspection documents and production processes and impose this obligation on the Supplier's subcontractors, so that the Buyer will have these rights without separate payment. Moreover, the Supplier must promptly provide the Buyer with all documents required for the installation and further handling of the subject-matter of the contract, including, but not limited to, assembly instructions and original operating instructions. Any additional documents and information considered necessary by the Buyer according to the respective applicable standards shall be provided promptly.

7.2 Where import and/or export licenses or foreign exchange authorizations or similar permits and approvals are required for performance of the contract, the Supplier is responsible for getting them and undertakes to obtain them without delay.

7.3 The Supplier must keep the Buyer immediately indemnified against any liability the Buyer may incur because of the Supplier's failure to obtain any required consents, permits and licenses.

## **8 Confidentiality**

8.1 The Supplier undertakes to treat all confidential information and the contract that will be concluded as strictly confidential and will also place all of its employees and other persons for whom the Supplier is legally responsible under the obligation to treat such information as confidential.

8.2 Confidential information, for the purposes of these Purchase Conditions, means any information, whether embodied information or information transmitted electronically or verbally, the Buyer makes accessible to the Supplier in the course of the business relationship or its initiation or which becomes otherwise known to the Supplier, regardless of whether such information is expressly designated as contractual or confidential by the Buyer, verbally or in writing.

- 8.3 In the event of a breach by the Supplier or any person for whom the Supplier is legally responsible the Supplier undertakes to pay, regardless of culpability, a penalty in the amount of EUR 20,000.00, which shall not be subject to judicial mitigation.
- 8.4 Drawings, models, templates, patterns, tools and other production resources shall not be made available or otherwise accessible to third parties without the prior written consent of the Buyer.
- 8.5 Any reference of the Supplier to the Buyer, in particular the use or display of trademarks and logos on the website or in any other publication of the Supplier is subject to written approval by the Buyer. The Buyer may revoke any reference approved in the past at any time.

## **9 Guarantee/Warranty**

- 9.1 The Supplier warrants and guarantees that all goods provided and services delivered will be state of the art and meet all applicable safety, quality, statutory and other requirements and all other industry standards, and will have the features normally expected and (explicitly or implicitly) guaranteed and comply with the technical data. The Supplier's information, in particular with respect to features, quality, intended use or quality of the subject-matter of the contract, shall be regarded as characteristics expressly guaranteed by the Supplier.
- 9.2 The guarantee and warranty period is 24 months after handover to the Buyer. The handover shall be deemed to have taken place when the Buyer has signed a takeover record.
- 9.3 The Buyer may, at its discretion, demand improvement or replacement of the defective delivery or engage a third party to carry out the improvement at the expense of the Supplier or rescind the contract or demand a reasonable reduction in price under warranty.
- 9.4 The warranty period starts anew after the Supplier has completed (or attempted) the correction of the defect.
- 9.5 Work performed under guarantee or warranty must be carried out, at the expense of the Supplier, at the Buyer's location or, at the Buyer's request, at the location of the Buyer's customer to whom the product was delivered.
- 9.6 Shipping costs and waste disposal costs of any kind in the context of guarantee / warranty claims shall be for the account of the Supplier.
- 9.7 The parties agree to waive the Buyer's obligation of giving notice of defect according to § 377 UGB (Austrian Commercial Code).

## **10 Trademark rights**

- 10.1 The Supplier affirms that the delivery item does not contravene or threaten to contravene third-party trademark rights. The Supplier assumes liability for any claims arising from any contravention of trademark rights and applications for trademark rights, provided that the delivery items are used in accordance with the contract, and the Supplier shall keep the Buyer completely indemnified against any liability the Buyer may incur in that respect.
- 10.2 The Supplier undertakes to notify the Buyer immediately of any risk of contravention and any supposed case of contravention that becomes known and will give the Buyer the opportunity to take joint action in response to any ensuing claims, always at the expense of the Supplier, however.

## **11 Liability**

- 11.1 The Supplier shall be fully liable towards the Buyer for any direct or indirect damage resulting from defective or delayed delivery, contravention of official safety regulations or any other reasons and shall keep the Buyer immediately indemnified against any liability the Buyer may incur in that respect.

## **12 Withdrawal from contract**

- 12.1 The Buyer is entitled to withdraw from the contract for cause and without observing a notice period, in particular if the Supplier (a) breached material contractual obligations, (b) breached statutory provisions in performance of the contract or (c) if the Supplier failed to provide the agreed product/service after fruitless lapse of a 14-day grace period.
- 12.2 The Buyer is also entitled to withdraw from the contract with immediate effect if delivery of the product/service provision by the Supplier is no longer possible.

## 13 Miscellaneous

### 13.1 Provision of material:

If the Buyer provides any material, plans or other items, the Supplier undertakes to check them and immediately report any defects or unsuitability. The Supplier may use defective material only after consultation with the Buyer and in accordance with the instructions then given by the Buyer. As to the materials and fabrics provided to the Supplier for processing and improvement, the Supplier is responsible for a treatment appropriate for the material involved. If the material provided by the Buyer becomes unusable through the Supplier's fault, the Buyer will be entitled to provide the Supplier with the material again (of course at the expense of the Supplier) without prejudice to any other claims against the Supplier, and to request immediate performance again.

### 13.2 Our property:

- The full title to all drawings, documents, models, equipment, special tools, appliances and materials provided to fulfill orders ("**items supplied**") shall remain with the Buyer. The Supplier does not acquire the (co-)ownership in the items supplied by performing the contract.
- The Supplier shall use the items supplied, taking into account their intended use and applying utmost care, and continuously maintain and keep them for the sole purpose of fulfilling the supply contract with the Buyer.
- The Supplier shall neither sell nor lease the items supplied or otherwise give them to third parties. The Supplier shall ensure that the items are clearly identified as property of the Buyer and not mixed with other items. The Supplier shall repair any damage to the items supplied at the Supplier's expense and keep the Buyer indemnified against any liability the Buyer may incur in that respect.
- The Supplier shall take out adequate insurance at its own expense for the items supplied by the Buyer and provide evidence thereof to the Buyer.
- The Supplier must inform the Buyer promptly of a potential attachment or claim raised by a third party with respect to the items supplied by the Buyer. If insolvency proceedings are instituted against the assets of the Supplier, the Buyer will have a right to separate the items supplied from the estate.
- The items supplied by the Buyer shall be handed over and returned to the Buyer upon request at any time and in any case promptly after performance of the contract and at the sole expense of the Supplier. The parties agree that the Supplier will have no right of retention whatsoever with respect to the items supplied. Material waste will pass into the ownership of the Supplier, unless otherwise specified by the Buyer.

### 13.3 Written form, entire agreement, legal succession:

- All amendments and supplements and any side agreements to these Purchase Conditions or contracts between the Buyer and the Supplier must be in writing to be effective. The same shall apply to any waiver, modification or cancellation of the written form requirement.
- The Supplier acknowledges that no person for whom the Buyer is legally responsible will have authority to make declarations deviating from these Purchase Conditions or other statements by the company.
- Oral statements will only be effective to the extent to which they are confirmed in writing and signed on behalf of the company by the Buyer.
- All rights and obligations arising from these Purchase Conditions shall pass to the legal successors of the Buyer and the Supplier.

### 13.4 Severability:

Should any provision of these Purchase Conditions be invalid, the Buyer and the Supplier hereby expressly undertake to agree on legally valid provisions coming as close as possible to the economic purpose of the invalid provision. The validity of the remaining provisions shall not be affected by the invalid provision. The same shall apply to loopholes in the contract.

## 14 Place of jurisdiction, governing law

14.1 The exclusive place of jurisdiction for any dispute arising in connection with the agreed products / services provided to the Buyer on the basis of these Purchase Conditions shall be the competent court at



the location of the registered address of the Buyer. The Buyer may sue the Supplier in another court in Austria or abroad, however.

- 14.2 Any dispute arising in connection with the products / services provided to the Buyer shall be governed in accordance with the Austrian substantive law, giving no effect to the provisions of the Austrian Private International Law and the UN Convention on Contracts for the International Sale of Goods. The laws of Austria shall apply also where services are used by foreign customers.

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