

General Terms and Conditions for Deliveries and Services of Broetje-Automation GmbH (Rev. 07/2012)

1. Offers and Conclusion of Contracts

- 1.1 The following Terms and Conditions shall apply to all offers and sales in particular of CNC facilities, tools, assembly and production lines, automation as well as other deliveries and services of Broetje-Automation GmbH (hereinafter referred to as the "Supplier"). They shall also apply to all follow-up orders. Any terms and conditions of the Purchaser which deviate from these Terms and Conditions shall not become part of any contract even if such terms and conditions are not expressly rejected by the Supplier.
- 1.2 A contract shall come into existence only through the written order confirmation of the Supplier, even if the order was placed with a branch office or a representative.
- 1.3 Any subsidiary agreements or amendments to the contents of a contract shall only be effective if confirmed by the Supplier in writing. Any statement of dimensions, weights and other technical particulars as well as illustrations, descriptions and drawings of an item of delivery which are contained in literature, brochures, product descriptions and other documents of the Supplier shall only be deemed approximate unless they have been declared as being binding by the Supplier explicitly in writing in the order confirmation. Offer documents, drawings, samples and other similar information of a physical or non-physical nature shall be subject to the property right and / or copyright of the Supplier and must not be made accessible to any third party except with the Supplier's prior consent.
- 1.4 The Supplier reserves the right to make changes to the technical design or shaping of an item of delivery even after conclusion of the contract provided that such changes do not materially modify the item of delivery and are not unreasonable for the Purchaser.

2. Prices

- 2.1 Except as otherwise agreed, prices of items of delivery are quoted ex works / warehouse, including the loading onto the means of transport but not including any costs of packaging, insurance or installation and assembly. The prices / any payments on account shall be subject to the addition of the value-added tax or any customs duties at the statutory rate applicable at the date of the invoice as well as any forwarding costs incurred. If it has been agreed that delivery is to be effected more than 4 months after conclusion of contract, the Supplier's prices applicable on the day of shipment shall be charged.
- 2.2 Even in cases of a delivery agreed on the term "carriage paid", transport shall be at the Purchaser's risk, unless otherwise agreed explicitly.

3. Terms of Payment

- 3.1 Except as otherwise agreed, payments shall be due by cashless means immediately after receipt of the invoice, without any deduction, and shall be made free to the Supplier's place of payment. Representatives or other sales staff of the Supplier are not authorised to receive any payments.
- 3.2 In case of a failure to meet any specified date for payment, the Purchaser shall be deemed to be in arrears without any reminder being necessary (Art. 286 Para. II BGB [German Civil Code]). In this case, the Supplier shall have the right pursuant to Art. 288 BGB to charge interest on arrears at a rate of 8% p.a. above the base interest rate (Art. 247 BGB), unless he can prove having sustained higher damage through arrears. Bills of exchange and cheques will only be accepted on account of payment. If bills of exchange and cheques are drawn on secondary bank places, the Supplier shall not be liable for timely protest. All discount, bill and collection costs shall be borne by the Purchaser. Any claims for defects relating to an item of delivery shall not entitle the Purchaser to withhold any payments due. Any rights of retention and the offsetting against contested and not legally ascertained counterclaims shall be excluded.
- 3.3 If the agreed bills of exchange or cheques are not drawn or honoured in good time, in case of a cessation of payments, in case of a petition for the opening of bankruptcy proceedings against / on the assets of the Purchaser or in case of a foreclosure or levy of execution, the entire purchase price shall be payable immediately without any prior reminder. If any claims in bankruptcy proceedings are reduced to a dividend, any and all claims for any agreed discounts or bonuses shall lapse.
- 3.4 In the cases set forth under the above subparagraph 3.3, the Supplier shall also have the right to take back the item of delivery at the Purchaser's expense, while excluding any right of retention for the Purchaser, as a security or for the purpose of a private sale at the best possible price for the account and risk of the Purchaser, whereas this must not be deemed as a termination of the contract by the Supplier. After taking back the item of delivery, the Supplier may, in the cases set forth under subparagraph 3.3 and without setting any specific time, also claim compensation in lieu of performance. Such compensation shall be 10% of the purchase price unless and insofar as the Purchaser is able to show that the Supplier sustained lower loss or damage or the Supplier is able to show that he suffered higher loss or damage.
- 3.5 The Supplier may, if he receives negative information concerning the Purchaser's creditworthiness and the Purchaser is not able to refute said information, demand payment in advance or the provision of a security or the right to deliver on COD terms or he may plead uncertainty pursuant to Art. 321 BGB.

4. Delivery Periods

- 4.1 Delivery periods and dates shall be without engagement except where a definite time of delivery has been agreed.

- 4.2 The time or period of delivery shall be deemed to have been met if the item of delivery has left the Supplier's factory / warehouse or the Supplier has notified readiness for delivery by the end of such time or period. The period of performance for deliveries or services for which acceptance is required shall be deemed as being met on advice of the items' readiness for acceptance. The time of delivery shall be reasonably extended in the event of any action in connection with labour disputes and on the occurrence of any unforeseen obstacles (e.g. interruption or disruption of business operations, shutdowns, embargoes, unavailability of transport, measures by official bodies) and in case of force majeure which are beyond the Supplier's control, provided that such obstacles can be proven to have a significant influence on the completion or delivery of an item of delivery. The foregoing shall also apply if any such circumstances occur with sub-suppliers. The Supplier shall notify the Purchaser of the beginning and the end of such circumstances as soon as possible.
- 4.3 Compliance with a time or period of delivery shall be dependent on the timely performance of a contract and the Purchaser's participation, e.g. with respect to the furnishing of documents, calculations, load histograms, permits, approvals or the execution of any agreed payment on account or the concession of any security for payment. Acceptance by the Supplier of any subsequent changes to the scope of order shall likewise cause the time or period for delivery to be appropriately extended.
- 4.4 The Purchaser may cancel the contract without granting any period of notice if complete performance should become finally and absolutely impossible for the Supplier before the passing of the risk. The Purchaser may also withdraw from the contract if, in case of an order the execution of a part of the delivery becomes impossible and the Purchaser has a justified interest in rejecting the partial delivery. Otherwise, the Purchaser shall be committed to pay the purchase price attributable to the partial delivery. In all other respects, sub-paragraph 9.2 of these Terms and Conditions shall apply.
- 4.5 Should the Supplier fall into arrears and the Purchaser suffer loss or damage as a result thereof, he shall have the right to claim liquidated damages for the delay. The liquidated damages shall amount to 0.5% for each week of the delay, but must not exceed the maximum percentage of 5% of the value of that part of the complete delivery which cannot be used in good time or in accordance with the terms of the contract as a result of the delay. If the Purchaser concedes to the Supplier who is in arrears a reasonable additional time for performance – while taking into account the exceptions as provided by law – and this additional time expires without remedy to the failure of performance, the Purchaser shall be entitled to withdraw from the contract according to the legal provisions. Any other claims resulting from a delay in delivery shall be governed exclusively by sub-paragraph 9.2 of these Terms and Conditions.
- 4.6 If dispatch is delayed upon the Purchaser's request, the costs incurred by the storage - when the storage is done at the Supplier's works - shall, commencing one month from the advice of dispatch, be charged to the Purchaser, whereas this charge shall be at least 0.5% of the invoice amount for each month, unless the Purchaser is able to prove that lower costs have been incurred.
- 4.7 The Supplier shall, however, be entitled to make any other use of the item of delivery and to supply the Purchaser within a reasonably extended time, once a reasonable additional time has been granted and has elapsed uselessly.

5. Transfer of Risk and Acceptance of Delivery

- 5.1 Delivery is carried out ex works. The risk is transferred – unless otherwise agreed explicitly – to the ordering party at the time of dispatch of the item of delivery and / or upon notification of his preparedness to take delivery, even if partial deliveries are made or the Supplier has agreed to provide additional performance or service, such as the payment of transport costs and the delivery and installation of the item of delivery.
- 5.2 If requested by the Purchaser, the Supplier will insure the goods at the Purchaser's expense against theft, breakage, transport, fire and water damage and any other insurable risks.
- 5.3 Should the shipment be delayed as a result of circumstances, for which the Purchaser is responsible or by cases of force majeure, the transfer of the risk shall be effective as of the day when the items are ready for delivery.
- 5.4 Delivered items shall, even if they have minor defects, be received or accepted by the Purchaser without prejudice to the rights pursuant to sub-paragraph 8 of these Terms and Conditions.
- 5.5 The Supplier shall have the right to make partial deliveries.

6. Withdrawal from Contract

In a case of force majeure, in case of a failure by the Purchaser to perform his contractual obligations despite the allowance of time, and / or in case of a delay in payment, the Supplier shall be entitled to withdraw from the contract by giving written notice, without prejudice to any claims for compensation. The same shall apply if due to any unforeseen events according to the provisions of sub-paragraph 4.2 of these Terms and Conditions, the performance of the contract can no longer be reasonably expected or if the Purchaser is in delay with the acceptance of the machine one month after the note of dispatch.

7. Reservation of Title

- 7.1 The Supplier reserves title to all items of delivery until any and all claims, including future or conditional ones, asserted by the Supplier against the Purchaser arising from the business relationship between them, including interest and costs, have been settled. This shall apply even if any or all claims of the Supplier are placed on a current account and a balance has been drawn and recognised.

Broetje-Automation GmbH shall have the right, during the normal business hours, to inspect and record the items of delivery supplied under reservation of title and not yet paid completely to Broetje-Automation GmbH.

- 7.2 In case of any conduct in breach of contract by the Purchaser, and in particular in case of a delay in payment, the Supplier shall have the right, after having submitted an appropriate reminder, to take back the item of delivery, and the Purchaser shall be committed to issue and surrender the same. The assertion of a reservation of title or attachment or levy of distress of the item of delivery by the Supplier shall not be deemed a withdrawal from the contract. A petition for the opening of bankruptcy proceedings against the Purchaser shall entitle the Supplier to terminate the contract and to demand immediate return of the item of delivery.

- 7.3 Notwithstanding the Purchaser's obligation to pay, the Supplier shall be entitled either to sell an item of delivery which has been taken back at the best possible price and to put the proceeds obtained on credit, or to credit said item to the Supplier at the contractual price less any cash and / or other discounts. An amount of 10% of the contractual price shall be payable as an expense allowance for compensation of the repurchase and resale effected by the Supplier.

The Purchaser may neither give the item of delivery in pledge nor assign it by way of security. In case of attachments or other such interference by third parties, the Purchaser shall have a duty to notify the Supplier without any delay. The reservation of title shall not be lifted by any payments of third parties, and in particular not by any payments of endorsers. To this extent, the rights of the Supplier shall pass to the payer.

The Purchaser shall be committed to insure the goods to which the Supplier reserves title adequately against fire, burglary, theft and water damage. Insurance claims are hereby already assigned to the Supplier to an amount equivalent to the value of the goods. The Supplier accepts this assignment.

- 7.4 The Purchaser shall have the right to resell the item of delivery in the normal course of business and on such terms and conditions as they are in conformity with these Terms and Conditions of Sale. Should he find himself in financial difficulties or should he have failed to settle his debts towards the Supplier, however, he may dispose of items of delivery only with the express prior consent of the Supplier. Any disposal without such consent shall be invalid unless such consent is subsequently given.

- 7.5 The Purchaser hereby assigns to the Supplier all claims or considerations accruing to him from the sale or on any other legal grounds in respect of the goods to which the Supplier reserves title. The Purchaser shall remain entitled to collect claims even after such assignment, but the Supplier shall also have the right to collect any claims directly from the Purchaser's own customer. The Supplier shall avoid doing so, however, as long as the Purchaser fulfils his obligations in due form. The Supplier may demand that the Purchaser provide him with information on all assigned claims and the debtors of such claims and with information on and the delivery of any other documents necessary for their collection. Such third-party debtors shall also be informed of the assignment (absolute assignment) on the Supplier's request. If the item of delivery is resold together with any other goods not owned by the Supplier, the Purchaser's claim against his customer shall be deemed assigned to the amount of the delivery price agreed between the Supplier and the Purchaser.

- 7.6 Any processing by the Purchaser of items of delivery to which the Supplier reserves title shall always be done on the Supplier's behalf. If an item of delivery to which the Supplier reserves title is combined with any other items not owned by the Supplier, the Supplier shall become a co-proprietor of the new item so created in the same proportion as between the value of the item of delivery to which the Supplier reserves title and the new item.

- 7.7 The Supplier undertakes to release securities to which he is entitled to the extent as their value exceeds by more than 20% the value of the claims thereby secured thereby, unless such claims have not been settled already.

- 7.8 Despite the aforesaid reservation of title, the Purchaser shall nevertheless bear the risk of loss or deterioration of the items delivered.

8. Warranty

The Supplier warrants the items of delivery in respect of material or quality defects and legal infirmities, to the exclusion of all other claims but without prejudice to sub-paragraph 9 of these Terms and Conditions, as follows:

Material or Quality Defects:

8.1 If the items of delivery are intended for the fabrication of plants or plant components or for the installation in machines and equipment of the Purchaser and have not been developed and / or designed by the Supplier for this purpose, the Supplier will not give any warranty for the suitability, adequate strength or durability of said items. In the absence of any agreement to the contrary, responsibility for the suitability testing of the items of delivery for the Purchaser's purposes shall lie solely with the Purchaser. The following provisions shall be applicable under this proviso.

All items of delivery or parts thereof which prove defective due to a circumstance existing before the passing of the risk will, at the Supplier's option, either be repaired or replaced. Any such defects must be notified to the Supplier in writing immediately upon their discovery. Any replaced parts shall become the Supplier's property.

8.2 After consultation with the Supplier, the Purchaser shall grant the Supplier the necessary time and opportunity to enable him to carry out all repairs or replacements which the Supplier may deem necessary. Should the Purchaser fail to do so, the Supplier shall be released from the liability for any resulting consequences. Where any claims for defects prove justified, the Supplier shall, of the costs incurred by the repair or replacement, bear the costs of the replaced item including the costs of delivery within the Federal Republic of Germany and the reasonable dismantling and fitting or repair costs including reasonable transport costs within the Federal Republic of Germany in case of a repair outside the Purchaser's workshop, except as otherwise agreed, and, if this can be demanded reasonably in light of the circumstances of the individual case, the costs of the provision of any specialist personnel of the Supplier as necessary.

8.3 The Purchaser shall be entitled, within the bounds of the legal requirements, to withdraw from the contract if the Supplier - while taking due account of the exceptions provided by law - fails to meet, by his own fault, to meet a reasonable deadline granted to him for repair or replacement of a material or quality defect. In case of any insignificant defect, the Purchaser shall only have the right to claim a diminution of the purchase price. In all other cases, the right to reduce the purchase price shall be excluded.

- 8.4 In case of any defects to critical products purchased from third parties which the Supplier has used in the item of delivery, the Supplier shall have the right to refer the Purchaser at first to the Supplier's service organisation which is in charge of Purchasers' claims for repair or replacement, whereas this does not imply any limitation to the warranty given by the Supplier.
- 8.5 No warranty is given for any evident defects (including wrong deliveries or quantity shortages) which have not been notified in writing by the Purchaser to the Supplier within 10 days from receipt of the item of delivery by the Purchaser, or for any damage which has been caused by natural wear and tear, in particular to seals, insulations and springs, and by the unsuitable or improper use, modification or repair of the item which has not been approved by the Supplier, by the faulty fitting or commissioning through the Purchaser or any third parties, by the failure to comply with the applicable operating and maintenance instructions, by the use of unsuitable operating means or of replacement parts which are not equivalent to original Broetje-Automation GmbH replacement parts, or by any biological, chemical, electro-chemical or electrical influences and for which the Supplier is not responsible.

Legal infirmities:

- 8.6 In the event the use of the item of delivery should cause a violation of any industrial property rights or copyright within the Federal Republic of Germany, the Supplier will at his expense seek either to obtain for the Purchaser the right of a continued use or to modify the item of delivery in a manner which is reasonable for the Purchaser and which eliminates the violation of said rights. If this is not possible on a reasonable economic basis or within a reasonable time, the Supplier shall have the right to withdraw from the contract. The Purchaser shall, if the same conditions apply, also have the right to withdraw from the contract. In addition, the Supplier shall, within their internal relationship "inter partes", indemnify the Purchaser against any claims of the owner of the proprietary rights which are undisputed or have finally and absolutely been established at law.
- 8.7 The obligations of the Supplier set forth under Figure 8.7 of these Terms and Conditions shall, except as set forth under sub-paragraph 9.2 of these Terms and Conditions, be the Supplier's sole obligations in the event of any violation of industrial property rights or copyright. They shall only arise if a) the Purchaser informs the Supplier immediately of any claims made on the violation of industrial property rights or copyright and if b) the Purchaser provides all reasonable support to the Supplier in defending such claims and, if necessary and appropriate, gives the Supplier the opportunity to effect the modifications referred to in sub-paragraph 8.6 of these Terms and Conditions and c) the Supplier retains all means of defence against such claims including the right of an out-of-court settlement and d) the legal infirmity is not due to an instruction of the Purchaser and e) the violation has not been caused by the Purchaser having modified the item of delivery without authority or having used it in a way not provided for in the contract.
- 8.8 The warranty for used items of delivery shall be excluded if the Purchaser is a business enterprise.

9. Liability

9.1 If, through the fault of the Supplier, the item of delivery cannot be used by the Purchaser in the manner provided for in the contract due to a failure to make proposals or give advice or due to the submission of any defective proposals or advice before or after conclusion of the contract or due to the breach of any other subsidiary contractual obligations - in particular in respect of instructions for the operation and maintenance of the item of delivery - the provisions under paragraph 8 and sub-paragraph 9.2 of these Terms and Conditions shall apply analogously, whereby all other claims of the Purchaser shall be excluded.

9.2 The Supplier shall be liable - on whatever legal grounds - for any damage not sustained by the item of delivery itself only in case of a wilful intent or gross negligence committed by the owner / governing bodies or senior officers, in case of a culpable injury or damage to the life / limb / health of individuals and in case of any defects to the item of delivery which the Supplier has maliciously concealed or whose absence he has warranted, or to the extent as the Supplier should be liable for any such defects under the product liability law on personal injury and damage to privately used property.

In case of a culpable breach of material contractual obligations, the Supplier shall also be liable for gross negligence of non-senior personnel and for ordinary negligence, though in the latter case his liability shall be limited to the loss or damage which is reasonably foreseeable in connection with a contract of the type in question. All other claims shall be barred.

10. Limitation

All claims of the Purchaser - on whatever legal grounds - shall, if the Purchaser is a business enterprise, lapse 12 months from the passing of the risk to the Purchaser. If the Purchaser is a business enterprise, any warranty claims made by the Purchaser with respect to the items of delivery shall lapse not earlier than 12 months from delivery of the item of delivery to the end Purchaser, though not later than 15 months from delivery to the Purchaser. Any warranty claims for used items of delivery which are not supplied to a business enterprise shall lapse after one year. The statutory periods shall apply in case of wilful or malicious conduct or in case of any claims asserted under the German Law on Product Liability.

11. Use of Software

If the scope of supply also includes software, the Purchaser shall be granted a non-exclusive right to use the software including the documentation supplied or to authorize the use by his Purchaser in connection with the relevant item of delivery and on the terms and conditions stipulated below. Any use of the software outside the item of delivery is prohibited. The Purchaser may reproduce, modify or translate the software or reverse-engineer it from the object code to the source code within the scope provided by law (Art. 69a ff. UrhG [German Copyright Act]) exclusively. The Purchaser undertakes not to remove or alter any manufacturer indications and in particular copyright notices. All other rights in the software and the documentation including any copies shall remain with the Supplier or the software supplier. The Purchaser shall be committed to impose the same obligations on the end customer of the item of delivery.

12. Other Provisions

The Supplier shall have the right to process any data on the Purchaser received in respect of or in connection with the business relationship and whether they originate from the Purchaser himself or from a third party within the scope of the German Data Protection Act.

13. Place of Performance and Legal Venue

- 13.1 The place of performance shall be the Supplier's place of business. The contractual relationship between the parties shall be governed by the Law of the Federal Republic of Germany excluding the Uniform Purchase Laws (Hague Convention on the Law of Purchase) and the United Nations' Convention on the International Sale of Goods of 11 April 1980.
- 13.2 All disputes arising out of the business relationship with established merchants shall be filed, irrespective of the value of matter in dispute, with the Magistrate County Court at Oldenburg (Landgericht Oldenburg). This shall also be the legal venue for all bills of exchange –, cheque - and other documentary proceedings related to the supply and / or service performed. The Supplier may also take legal actions at the courts having jurisdiction at the Purchaser's domicile. If the Purchaser has his place of business outside the Federal Republic of Germany, the Supplier as the plaintiff shall be entitled to bring the matter before a court of arbitration, which shall finally settle without recourse to the ordinary courts of law under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these Rules. The applicable language in the arbitration proceedings shall be English. The place of the arbitral hearings shall be Düsseldorf, Germany.