

## GENERAL TERMS AND CONDITIONS OF PURCHASE

As of **January 14, 2019**

### § 1

#### Scope

- (1) These General Terms and Conditions of Purchase (“AEB”) shall apply exclusively for all purchase orders for goods (“Deliveries”) and services [*Dienst- und Werkleistungen*] placed by Broetje-Automation GmbH (hereinafter referred to as “**Buyer**”) with suppliers in so far as other conditions are not expressly authorized in writing by the Buyer. These AEB shall apply even if the Buyer places orders or accepts deliveries or other services without reservation, in full knowledge of the terms and conditions of the supplier.
- (2) The AEB shall apply only if the supplier is an undertaking (as set out in section 14 German Civil Code, a legal person under public law or it relates to public law property.
- (3) The latest version of these AEB shall apply for all future contracts related to the purchase of deliveries and services without the Buyer having to refer to the validity in each individual case. The Buyer shall inform the supplier immediately upon any changes to the AEB.

### § 2

#### Orders / Contract Conclusion

- (1) Only written purchase orders or purchase orders confirmed in writing by the Buyer shall be binding. Before accepting any purchase order, the supplier must notify the Buyer about obvious mistakes (e.g. spelling or calculation errors) and incomplete information in the purchase order including the associated documents for the purpose of correction; otherwise, the contract shall be deemed as not concluded.
- (2) The supplier may accept the purchase order in writing within the commitment period stipulated therein, otherwise within 5 working days (Monday through Friday) of the date of the order. The date on which the acceptance letter is received by the Buyer is decisive. Acceptance is deemed unconditional.
- (3) Legally relevant declarations and notifications by the supplier after contract conclusion (e.g. deadlines, reminders, repudiation of contract) must be submitted in writing.
- (4) The Buyer shall retain all rights of ownership, copyright and industrial property rights of all order documents, materials and other items (e.g. drawings, images, models,

plans, cost estimations and calculations, product descriptions and other documents, special tools, etc.) provided and/or made available by the Buyer to the supplier. The supplier must not make such documents, materials or other items available to any third parties nor disclose the content thereof, use, reproduce or modify the same without the prior written consent of the Buyer. The supplier must use such above-mentioned items exclusively for contractual purposes; upon request of the Buyer, the supplier is required to return the same completely to the Buyer and to destroy all existing copies and delete copies in electronic form, respectively, if they are no longer needed in the regular course of business or pursuant to the legal obligation to retain data.

- (5) Drafts, cost estimations and other preparatory activities shall be free of charge for the Buyer unless otherwise agreed in individual cases.

### **§ 3**

#### **Deliveries / Time of Delivery and Performance**

- (1) The time of delivery or performance specified in the purchase order shall be binding. The supplier shall notify the Buyer in writing without delay in such cases when it may be foreseen that the agreed time of delivery or performance cannot be met, indicating the reason and the expected time of such delay.
- (2) Early deliveries and/or partial deliveries shall only be permitted with the prior written consent of the Buyer.
- (3) If the supplier fails to supply the delivery or performance or does not supply the delivery or performance within the agreed time of delivery or performance or is in default, the Buyer's rights - particularly its rights to rescission and damages - shall be governed by the statutory provisions. Moreover, the provisions of paragraph (4) shall apply. If the latest day on which the delivery or performance is to be supplied can be determined based on the contract, the supplier shall be delayed at the end of that day without this requiring an official reminder by the Buyer; the statutory requirements for setting deadlines prior to rescinding from the contract or claiming damages instead of performance shall remain unaffected.
- (4) In the event that the supplier is in default, the Buyer shall - in addition to further legal claims and fulfillment- be in able to demand lump sum compensation of the default damage in the amount of 0.5 % of the net price of the delayed delivery or performance per day, however, not exceeding 5 % of the net value of the delayed delivery or performance. The Buyer reserves the right to prove higher damage and the supplier retains the right to prove no or significantly less damage.

## § 4

### **Place of Performance**

Place of performance for all deliveries and service is the destination specified by the Buyer (i.e. the delivery and service address specified in the purchase order) or, if not expressly stated, the address of corresponding company that has placed the order.

## § 5

### **Prices / Payment Terms**

- (1) Prices specified in the purchase order are fixed prices and shall be binding. Prices shall be understood as being exclusive of statutory value added tax unless it has already been specified in the order.
- (2) Unless otherwise agreed, the price shall include all performances and ancillary services of the supplier (e.g. erection/installation, assembly, commissioning, setup/adjustment) as well as all additional expenses (e.g. proper packaging, transport, insurance of goods, other taxes, duties and levies). Upon the request of the Buyer, the supplier shall take back packaging materials at its own expense.
- (3) All order confirmations, delivery documents and invoices must bear order number, order date, article description, delivery quantity and the delivery and performance address. Processing delays due to missing information will result in an extension of the payment deadline by the period of the delay.
- (4) Payments shall be effected without any deductions within 30 calendar days after receipt of the delivery or performance and receipt of an invoice or equivalent request for payment. If payment is made within 14 calendar days, the Buyer shall be entitled to a cash discount in the amount of 3 % of the net value. Adherence to the payment deadline shall be determined based on the receipt of the Buyer's instructions to transfer money by the Buyer's bank. If the supplier's request for payment is subject to prior inspections or agreed acceptance, the Buyer shall be entitled to an inspection or acceptance period of 15 days after receipt of the delivery or performance.
- (5) The Buyer shall not owe any matured interest (§ 353 German Commercial Code). Default interest shall be charged at five (5) percent above the applicable base rate. The statutory provisions regarding delayed payment shall apply; however, a written reminder by the supplier shall be required in any case.
- (6) The Buyer shall be entitled to the rights of offsetting and retention as well as the plea of non-performance of the contract (§ 320 German Civil Code) to extent permitted by law. The Buyer shall, in particular, be entitled to withhold payment for any claims of incomplete or defective/poor performance arising from the corresponding contract;

this shall apply insofar as the payment retention would not constitute a breach of good faith in the circumstances in question, in particular owing to the relatively minor defect or degree of incompleteness (§ 320 section 2 German Civil Code).

- (7) The supplier shall only be entitled to offset claims and to assert a right of retention if the counterclaim is undisputed, ready for decision or has been established as final and absolute.

## **§ 6**

### **Foreign Trade Law and Supplier Information**

- (1) The Supplier shall provide following information in orders and order confirmations: details as to whether the goods to be supplied or the service to be provided require an export license and the relevant index number in accordance with German export law; details as to a possible registration in accordance with the US Commercial Control List (US-CCL) and the relevant index number; details as to whether the goods require and export license in accordance with the applicable EC Dual Use Ordinance and the relevant index number; commodity code; country of the goods' origin.
- (2) If, in a particular case, the Buyer is obliged to obtain an export and/or import license, the effectiveness of the contract shall be subject to the condition precedent of granting such export and/or import license. The Supplier shall be obliged to provide the Buyer with all information and documents required to obtain an export and/or import license along with the order confirmation and the goods without delay.

## **§ 7**

### **Intellectual Property and Right of Use**

- (1) The Supplier shall transfer to the Buyer all national and international industrial property rights pertaining to the work results the Supplier (and/or his vicarious agents) has created individually and/or to services rendered (hereinafter referred to as “work results”). This shall apply, in particular, to inventions as well as any rights in and arising therefrom (especially any rights based on patents and utility models or pertaining thereto), trademarks and designs. Moreover, the Supplier shall transfer all associated rights and entitlements to such property rights to the Buyer in full. Transfers in accordance with this paragraph (1) take place with the delivery or handing over of results whether advanced performances, partial performances or final performances. Insofar work results arise which may be protected by industrial property rights, the Supplier shall be obliged to notify the Buyer in writing without delay. The Buyer shall be free to register these protective rights in its own name. The Supplier shall offer the Buyer comprehensive support to this end, in particular hand over any required

information without undue delay and make any statements required and take any steps. The Supplier is prohibited from registering a corresponding right in its own name or that of a third party or supporting third parties directly or indirectly in this respect.

- (2) Notwithstanding the provisions set out in paragraph (1), the Supplier shall grant the Buyer for all work results (i.e. all work created as a result of the Supplier's services during the contractual relationship, especially e.g. computer programs (software), documentation or other design material) the exclusive, worldwide, unlimited in terms of time and content and irrevocable, transferable, sub-licensable rights of use to at the time of their creation for all currently known types of use. To the extent permitted by law, the Supplier shall also grant the Buyer sole and unrestricted right of ownership of work results from the time of their creation. The granting of rights shall include, in particular, the rights to use, edit, reproduce, distribute, rent, lend, broadcast, perform, publicly reproduce and make publicly accessible as well as any other rights that are required or enable the work results to be used to their full extent. For software and data, this relates, in particular, to the application and use as part of ASP, outsourcing, SaaS, Cloud as well as other forms of centralized or decentralized application, the application and use on any hardware - especially in embedded systems -, in any networks and across all means of transmission - for instance, by means of the Internet or mobile communication networks -, as object of any transfer and utilization model and any number of copies. For software, § 69 of the German Copyright Law (UrhG) shall apply accordingly. Insofar copyright and/or ancillary copyright to work results are transferable in accordance with national or foreign legal rules and in particular in case of "sui-generis" right to databases, the Supplier shall transfer these rights to the Buyer in derogation from the aforementioned provisions in this paragraph (1) in full. Insofar work results were not developed individually for the Buyer, the mentioned rights of use shall only be granted in form of non-exclusive rights of use.
- (3) If the Supplier engages the services of third-parties with the consent of the Buyer in accordance with § 17, the Supplier shall undertake to oblige such third parties pursuant with the requirements in paragraphs (1) and (2) and in favor of the Buyer and to provide proof thereof to the Buyer upon request.
- (4) The Supplier shall remain entitled to continue to use and apply all methods used or created, ideas and the know-how gained.
- (5) Insofar as software to be provided by the Supplier is not standard software, the Buyer shall have a right to claim the provision the software's underlying source code. Should, in individual cases, the provision of the source code not be owed, the Buyer may request the Supplier to deposit source code with an independent escrow agent at the expense of the Supplier. The escrow agreement must ensure, that the Buyer will be handed over the source code and is thus able to continue to use, maintain and further

develop the software without the Supplier, in particular in the case that the Supplier will cease its operation and/or insolvency proceedings are filed against the Supplier's assets. The Supplier shall be obliged to transfer to the Buyer the rights to use and edit the source and object code, including the right to edit and decompile the software, insofar necessary for the continued use and processing of the contract software at no extra cost; the Buyer shall be obliged to only utilize the rights of use only after the conditions for the handing over the source code set forth in the escrow agreement are met. Further details relating to the escrow shall be agreed upon in the particular case in a separate escrow agreement.

- (6) Insofar the Supplier is only obliged to supply already existing, generally available products which do not contain any individual adjustment, the Supplier shall, notwithstanding paragraph (1) and (2), only be obliged to grant or procure the licenses for the Buyer for the specific undertaking. The Supplier shall present the license conditions to the Buyer upon request. With regard to third party software, the Supplier shall provide proof of having obtained sufficient rights for the Buyer upon request.
- (7) The Supplier shall only be allowed to use so-called “open source software” after the prior written consent of the Buyer. The Buyer shall not be obliged to give its consent. The use of open source software licensed under GNU General Public License (GLP), version 3, shall generally be excluded. The Supplier shall be obliged to provide the Buyer in advance with (i) the name the specific open source software, (ii) make the applicable license conditions available, (iii) indicate the effects on the contractual services and (iv) the obligations for the Buyer resulting from the use of the open source software. Provided the Buyer approves the application of the open source software proposed by the Supplier, the Supplier shall be responsible for ensuring that the Buyer is in a position meet the obligations arising from the use of the open source software in full. Insofar the Supplier uses the open source software with the consent of the Buyer, the Supplier shall warrant that the software is licensed in the version specified by the Supplier and that the use of the open source software under this open source license neither conflicts with the intended use of the service by the Buyer nor compromises the use of the service by the Buyer.

## **§ 8**

### **Supplier's Retention of Title**

The assignment of the goods to the Buyer shall take place unconditionally and irrespective of payment of the purchase price. All forms of extended, prolonged or transferred retention of title shall be excluded so that a valid retention of title declared by the supplier shall apply only until payment has been made for the goods delivered to the Buyer and shall only apply for the same.

## § 9

### Quality Assurance

- (1) The supplier warrants that the products comply with the legal provisions, correspond to the latest state of technology and the agreed product specifications. This shall include, in particular, compliance with the Equipment and Product Safety Act, the rules on CE-marking, the Electrical and Electronic Equipment Act, the ordinance on the restriction of the use of certain hazardous substances in electrical and electronic equipment, as well as with Directives 2011/65/EU (RoHS) and 2002/96/EC (WEEE) and additional laws, directives and other regulations adopted for their implementation in the Federal Republic of Germany. The supplier warrants that the performance and services provided correspond to the latest state of technology.
- (2) Existing substance bans must be observed by the Supplier. The supplier warrants that the products correspond to provisions set forth in Regulation No. 1907/2006 regarding registration, assessment, approval and limitation of chemical substances (REACH Regulation). This shall apply also if the supplier is not located in the EU; in such a case, the supplier shall appoint a natural or legal person established in the EU to fulfill, as his only representative, the obligations on importers. The products delivered by the supply shall not contain a substance of very high concern (SVHC) within the meaning of Article 57 of the REACH Regulation and no substances on the applicable list for eventual inclusion in Annex XIV (so-called candidate list) in accordance with Article 59 of the REACH Regulation. The supplier shall notify the Buyer without delay if any of the goods ordered and/or the goods that have already been delivered - for any reason whatsoever - contain any of such substances, specifying the concentration in weight by weight.
- (3) Moreover, the Supplier shall be obliged to declare the substances contained in its products (if applicable with indication of the relevant CAS-registry numbers and the proportion of weight in percent by mass) provided these materials are listed in one of the following legal standards:
  - a) German Chemicals Prohibition Ordinance (ChemVerbotsV)
  - b) German End-of-Life Vehicle Regulation (AltfahrzeugV)
  - c) German Electrical and Electronic Equipment Act (ElektroG)
  - d) German CFC and Halons Prohibition Regulation (FCKWHalonVerbV)
- (4) The Supplier shall install and maintain a documented quality assurance system which is suitable in type and scope and which corresponds with the latest state of the art. The Supplier shall prepare records, in particular with respect to quality inspections, and make these available to the Buyer upon demand.

- (5) The supplier shall undertake to provide the deliveries and perform the services in accordance with relevant company standards as well as the Quality Guideline for Suppliers of the Buyer which can be accessed at <http://www.broetje-automation.de/en/downloads/>
- (6) The supplier shall ensure traceability of his products at any given time. The supplier shall furthermore take appropriate measures to ensure that at in the event of a fault in certain products, the supplier is able to identify all other products that may be affected.
- (7) The supplier shall undertake to submit supplier declarations within the meaning of Directive (EC) No. 1207/2001 and to confirm the preferential status of the products. The declaration of the country of origin on the invoice is not sufficient. The supplier shall warrant the correctness of the supplier's declaration and shall be liable for any damage or loss towards the Buyer. A long-term supplier declaration shall be permitted; however, upon demand of the Buyer, a supplier declaration must be submitted in each case.
- (8) The Buyer shall be entitled to enter the production facility as well as the other business premises of the supplier during normal business hours after prior notification and to verify compliance with quality assurance requirements. The execution of such an inspection shall not release the supplier from its liability for improper deliveries or services.

## **§ 10**

### **Specific Provisions Concerning the Provision of Services**

- (1) The supplier shall provide any and all services independently and at his own responsibility. The supplier is not bound by any professional and/or disciplinary instructions of the Buyer. The supplier as well as the personnel assigned by the supplier do not have an employment or work contract with the Buyer nor do they maintain an “employee-like” relationship. The Buyer shall only be entitled to the contractual right to specify the corresponding services.
- (2) The supplier shall undertake to comply with all relevant regulations concerning the employment of personnel.
- (3) The Supplier undertakes to meet its legal duty to maintain safety when performing the services. The Supplier shall ensure that its personnel, their relatives and its local employees know and comply with all requirements and regulations applicable at the place of performance concerning occupational health and safety, environmental protection and fire protection, laws, regulations and company standards.



- (4) The supplier shall indemnify the Buyer from all claims which may be asserted against the Buyer as a result of any violation of regulations that is attributable to the supplier. The indemnity shall be provided by the supplier upon first demand.
- (5) The supplier shall undertake to ensure careful and secure storage of property, materials and other equipment brought to the place of performance by its personnel and to insure such items against loss and/or damage. Liability of the Buyer for loss or damage shall be excluded except in cases of willful intent or gross negligence.

## § 11

### **Rights in cases of Material Defects and Defects in Title and other Breaches of Duty**

- (1) The rights of the Buyer in cases of material defects and defects of title as well as in cases of other breaches of duty shall be governed without restrictions by statutory provisions and the supplementary regulations as well as § 12 of this AEB.
- (2) The commercial duty to inspect and to give notice of defects shall be governed by statutory provisions (§ 377 HGB [*German Commercial Code*]) and by the regulations set forth in this paragraph. The Buyer's duty to inspect shall be limited to defects which become apparent during the visual inspection of incoming goods, including the inspection of delivery documents as well as during random quality control inspections (e.g. transport damage, wrong deliveries or short shipments). The duty to inspect shall not apply if acceptance testing has been agreed upon. The duty to give notice of defects discovered at a later point in time shall remain unaffected. In accordance with sentence 2 (apparent defects), complaints shall be deemed to be without delay if forwarded within 8 working days from receipt of the goods; in accordance with sentence 4 (discovery at a later point in time), the deadline shall set to 3 working days after discovery.
- (3) In the event that the goods or services are defective, the Buyer may demand, at its own discretion, supplementary performance in form of repairing the defect (rectification of defect) or delivery of products free from defects (substitute delivery) or manufacture of a new product (re-manufacturing). If the supplier fails to comply with its obligation to render supplementary performance within the reasonable deadline set by the Buyer, the Buyer shall be entitled to correct the defect itself and demand that the supplier reimburse the associated expenses or demand a commensurate advance payment. If the supplementary performance by the supplier has failed or fails or are unacceptable for the Buyer due to special circumstances (e.g. due to particular urgency, a risk to operational reliability or the imminent risk of unreasonably high losses), no deadline - or new deadline - needs to be set; the Buyer shall inform the supplier of such circumstances immediately, if possible, before correcting the defect.

- (4) The expenses incurred by the supplier for inspection and correction purposes - including any removal and installation cost - shall be borne by the supplier even if it transpires that there was in fact no defect. The Buyer's liability for damages in case of unjustified demands for correction of defects shall remain unaffected; however, the Buyer shall only be liable if the Buyer has recognized or was grossly negligent in failing to recognize that there was in fact no defect.
- (5) The supplier shall bear the procurement risk for its deliveries and services unless expressly agreed otherwise (e.g. indeterminate obligation).
- (6) Any provisions of the supplier limiting liability shall not be accepted.
- (7) The statutory rights of the Buyer within the supply chain (supplier's recourse in accordance with § 478, 479 German Civil Code) shall apply without restriction.

## **§ 12**

### **Infringement of Third Party Property Rights**

- (1) The Supplier shall warrant in accordance with paragraph (2) that the Deliveries provided by the Supplier or the work results referred in § 7 will not infringe any property rights of third parties in the European Union (EU) and the European Economic Area (EEA), Switzerland, the USA or any other country where products are produced by the Supplier or products are produced on behalf of the Supplier.
- (2) The supplier shall undertake to indemnify the Buyer from all claims that third parties may assert against the Buyer for infringements of property rights referred to in paragraph (1) and to compensate the Buyer for all damages and reasonable expenses incurred in connection with such third-party claims. The claims in accordance with sentence 1 are excluded insofar as the supplier is not responsible for the infringement nor should have been aware of such infringement at the time of the delivery using the due diligence of a prudent businessman.
- (3) Claims of the Buyer with respect to defects in title shall remain unaffected.

## **§ 13**

### **Limitation**

- (1) The limitation period shall be governed by statutory law unless otherwise stipulated in this AEB.
- (2) Notwithstanding § 438, section 1, number 3 German Civil Code and § 634, section 1, number 1 German Civil Code, the general period of limitation for contractual claims for defects in quality and title shall be three years from the transfer for the goods to the

Buyer at the place of performance or - in case of performance of work and insofar as acceptance regarding the delivery has been agreed - with acceptance.

- (3) The statutory rights of the Buyer within the supply chain (supplier's recourse in accordance with § 478, 479 German Civil Code) shall apply without restriction.

## **§ 14**

### **Product and Producer Liability**

- (1) In the event that that a claim for damages is asserted against the Buyer by third parties on account of personal injury or damage to property in course of the product or producer liability and if such personal injury or property damage is attributable to a product supplied by the supplier, the supplier shall indemnify the Buyer from such claims, insofar as the supplier himself is liable vis-à-vis third parties.
- (2) If the Buyer is obliged to carry out a recall campaign on account of a defective product delivered by the supplier and the danger to persons and/or property this product presents, the supplier shall be obligated to bear all costs associated of such recall campaign. Further statutory claims shall remain unaffected. The Buyer shall - insofar as possible and reasonable - inform the supplier of the recall campaign as early as possible and provide the supplier an opportunity to comment.
- (3) The supplier shall notify the Buyer immediately, if the supplier has good reason to believe that it may become necessary to recall one of the products ordered by the Buyer.
- (4) The supplier shall undertake to obtain, at its own expense, sufficient insurance cover against all product liability risks and submit proof of such insurance cover to the Buyer upon request.

## **§ 15**

### **Spare Parts**

- (1) The supplier shall undertake to make a current (price) list with all spare parts available for the goods delivered available to the Buyer at the time the goods are delivered.
- (2) The supplier shall undertake to stock spare parts for products delivered to the Buyer for a period of at least 10 years from the time of delivery.
- (3) Notwithstanding the provision in paragraph (2), the supplier shall notify the Buyer without delay, if the supplier intends to discontinue the production of spare parts for products delivered to the Buyer.

## **§ 16**

### **Special Right of Withdrawal**

The Buyer shall be entitled to a special right to withdraw from the contract, if (i) the supplier stops payment of its creditors; (ii) the supplier or another creditor files an application to open insolvency proceedings; (iii) if an insolvency proceeding regarding the supplier's assets is opened; or (iv) if the application is rejected due to a lack of assets.

## **§ 17**

### **Involvement of Third Parties**

The supplier shall not be entitled, without the prior written consent, to assign services to third parties (e.g. subcontractors).

## **§ 18**

### **Prohibition of Assignment**

The supplier shall not be entitled to assign its claims against the Buyer from the contractual relationship to third parties. This shall not apply to monetary claims.

## **§ 19**

### **Data Protection**

- (1) Personal data shall be stored and processed by the Supplier subject to the statutory provisions.
- (2) Personal data shall be stored by the Buyer subject to the statutory provisions.

## **§ 20**

### **Applicable Law / Venue / Language / Other**

- (1) The law of the Federal Republic of Germany shall apply exclusively. Application of the uniform UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- (2) The exclusive - including international - legal venue for all disputes arising from the supply relationship shall be the competent court having jurisdiction at the location of the Buyer's registered office. However, the Buyer shall be entitled to initiate legal action at the venue of the supplier. Mandatory legal provisions concerning the exclusive jurisdiction shall remain unaffected.

- (3) Should any of the provisions stipulated in this AEB - in full or in part - be or become void or ineffective, the validity of the remaining provisions shall remain unaffected. Insofar as provisions have not become integral parts of the contract or are ineffective, the content of the contract shall be based on the statutory provisions (§ 306, section 2, German Civil Code). Only and insofar as no supplementary contract interpretation takes priority or is possible, shall the parties agree to replace the void or ineffective provision with an effective provision which serves the intended economic purpose as closely as possible.
- (4) This AEB is provided in German and English language. The English version serves informational purposes only is not an integral part of the AEB. The German version shall prevail in case of any discrepancies between the German and the English version.