

## General terms and conditions of purchase BAUR GmbH, A-6832 Sulz, Austria

Status: August 2022

### General

The following terms and conditions are an integral part of all present and future contracts concluded between BAUR GmbH (hereafter called Buyer) and its suppliers and contractors (hereafter called Seller). The scope and validity of the terms and conditions of contracting partners that contradict the general terms and conditions below even if only partly, is excluded in its entirety without it leading to disagreement. Unless stipulated otherwise in a separate agreement or in these general terms and conditions, the statutory rule will apply exclusively.

#### I. Conclusion of contract

1. All inquiries by the buyer are non-binding. Proposals and cost estimates prepared by the seller are free of charge and the seller is liable for the accuracy. When in doubt, all inquiries by the buyer to potential sellers are only invitation for bids from the seller.
2. The acceptance of the bid by the buyer will be done exclusively in writing, whereby E-mail or Fax is sufficient.
3. The content of all agreements concluded between the buyer and the seller, inclusive of these general terms and conditions, can be amended only by a separate written agreement (E-mail or Fax is enough) that must be signed by the buyer. This also applies for any digression from this written form requirement. Verbal side agreements are void. However, general reference to printed, reproduced or online contract documents of the seller is not enough for any amendment of the purchase conditions.

#### II. Prices

In the absence of other explicit agreements, prices given to the buyer include all surcharges and additional costs, inclusive of transport costs. Agreed prices or prices based on the agreement, are considered as fixed prices, price adjustment clauses and similar will not be accepted by the buyer unless they are negotiated separately and confirmed by Buyer in writing.

#### III. Payment

Invoices received can be remitted only if the order information (customer name, order number, cost centre or investment number) is specified and correctly stated.

Settlement of the invoice does not imply waiver of any warranty claims with regard to the delivered goods and does not rule out any subsequent complaints. Unless explicitly agreed upon otherwise, Buyer pays invoices within 15 days, starting from the date of receipt of goods and invoice, with 3% discount or within 30 days net.

Payment is considered as done on time if the transfer order is issued before the limit date. The buyer is authorized to offset against both payable and not payable receivables.

#### IV. Delivery

1. Unless explicitly agreed upon otherwise, delivery by the seller must be done "DDP" to the head office of the buyer (Incoterms® 2020).
2. Delivery timings: Monday-Friday 8:00 a.m. till 12:00 a.m. and Monday – Thursday 1:00 p.m. till 3:00 p.m. Deliveries made beyond the stipulated delivery timings will not be accepted.
3. Unless stipulated otherwise by the buyer, all agreements must be fulfilled by the seller on request of the buyer. Agreed delivery and service dates are fixed dates, so that the supplies and services must reach or must be furnished on the specified delivery day and to the specified delivery address within the business hours stipulated by the buyer, failing which, the supply or service shall be considered as incomplete and the seller shall be in default. All deliveries will be made free of charge DDP Sulz (Incoterms® 2020),

including packing. The buyer is not obliged to accept deliveries that are in surplus or in shortage.

4. The buyer is only obliged to accept the quantities that correspond to the actual requirement. The buyer reserves exclusive rights to cancel, decrease or increase batch sizes, likewise to change acceptance dates.
5. Even partial transfer of contractual obligations of the seller towards the buyer to a third party is not allowed without the express written permission (whereby E-mail or Fax is enough) of the buyer.
6. If the seller foresees that the supply or service might be delayed, the seller must immediately notify the buyer in writing. In case of foreseeable or actual delay, the buyer has the right to withdraw from the agreement in compliance with point XII. If the buyer does not withdraw from the agreement, the seller must pay the buyer a penalty of 1% of the order sum per calendar week that has commenced. The assertion of further claims and the right of the buyer to terminate the contract and for substitute performance will not be affected by it.
7. The seller is obliged to inform the buyer on time by registered mail about announcements concerning changes in components that the buyer buys or bought from the seller and which will be used by the seller to furnish services to the buyer. In addition, for minimum 3 months after the buyer receives such a notice, the seller is obliged to give the buyer the opportunity to place a final order for the "recalled components" at the current terms. If the seller goes against this obligation, then the seller must indemnify and hold harmless the buyer for all ensuing damages or disadvantages (e.g. redesign costs, profit losses etc.).
8. Even if the buyer does not accept the contracted supplies or services from the seller on the agreed delivery date, the risks will not be passed on to the buyer. Moreover, even in this case, the seller is obliged to store the goods carefully and properly and to deliver the goods any time on request of the buyer. However, the seller is authorized to withdraw from the contract after giving a grace period in writing. In case of grossly culpable refusal of the contracted goods by the buyer even after the grace period, the seller can seek compensation for any immediate damages, however not for any lost profit or consequential damages.

#### V. Environmental and packaging requirements

1. If the goods delivered by the seller can produce hazardous waste, the seller is obliged to indicate the same to the buyer and advise the buyer on appropriate disposal measures. Upon request of the buyer, the seller agrees to take over any waste matter remaining after the intended use of the goods supplied by the seller. In addition, the seller also agrees to dispose of all packaging materials delivered to the buyer through the ARA service contract and at its own cost and to record this accordingly on invoices and delivery notes.
2. If the seller fails to comply with its obligations under point 1, the seller shall indemnify the buyer and hold it harmless in full for all resulting damages in particular, with regard to costs for any kind of substitute performance.

#### VI. Interest on arrears

If the seller has pending dues to the buyer, the seller is required to pay the statutory interest on arrears starting from the due date (UGB or Commercial Code § 456). However, if the buyer is in default with payments to the seller, the buyer is required only to pay default interest at a rate of 4% p.a

## **VI. Interest on arrears**

If the seller has pending dues to the buyer, the seller is required to pay the statutory interest on arrears starting from the due date (UGB or Commercial Code § 456).

However, if the buyer is in default with payments to the seller, the buyer is required only to pay default interest at a rate of 4% p.a.

## **VII. Lien on goods**

The seller is not liable to the buyer either for a right of retention or for a right to set off from whatever title.

## **VIII. Retention of title**

The buyer does not agree explicitly to a retention of title in favour of the seller because it generally buys the goods for the purpose of further processing. Even the acceptance of supplies and services offered under retention of title by the buyer does not constitute to consent to a retention of title.

## **IX. Common provisions for warranties and damages**

1. Goods and services that are delivered or furnished to the buyer must correspond to the EU standards and regulations applicable at the time of delivery.
2. The application of the provisions of the company law §§ 377 f or UGB or Commercial Code (duty to inspection and objection) to the buyer is expressly excluded.
3. If defects or damages are not resolved by the seller within a maximum 14-day period stipulated by the buyer, the buyer shall be entitled without further notice to rectify the defects independently at the expense of the seller, or to have them remedied by third parties.
4. As part of the warranty, the buyer is entitled to make improvements, replacements, price reductions and conversions, without complying with a specific sequence. Likewise, the buyer is entitled, without complying with a sequence, to seek monetary compensation, repair or replacement as part of compensation for damages.
5. The limitation of damages and warranty claims by the buyer starts even for partial supplies or services only upon full performance of the contract by the seller, even if the buyer already has the goods or services.

## **X. Warranty**

1. The seller is required to correct any defects immediately. The cost for repairs, especially costs for installation and removal, transportation, waste disposal, travel and working hours, as well as troubleshooting shall be borne by the seller. Further claims by the buyer remain unaffected by it.
2. The warranty period for the buyer is 3 years, regardless of any statutory period of § 933 Civil Code also for movable objects. Within the above warranty period, if the buyer notices a defect, then until proven to the contrary, it will be assumed that this defect was already present at the time of delivery or service.
3. In the case of goods with software products, the Seller shall be obligated to provide an annual update free of charge and shall inform the Buyer in writing without undue delay of any available update options. If an update is only possible in connection with an upgrade, the upgrade shall be provided by the Seller also free of charge.

## **XI. Compensation for damages**

1. There are no limitations or exclusions in the liability of the seller. The seller is liable for all direct and indirect damages that are caused to the buyer or third parties even due to slight negligence on its part. In particular, the seller is liable for slight negligence even for pure economic losses, lost profits, consequential damages, delay damages, as well as damages resulting from claims by third parties against the buyer.
2. The seller is obliged to hold harmless and indemnify the buyer with regard to all product liability claims made by third parties that arise from the products supplied to the buyer. On request of the buyer, the seller is responsible for immediately notifying the supplier, importer and manufacturer of the supplied goods and for the transfer of any relevant proof of defence. Statutory claims by the buyer against the seller, resulting from product liability remain unaffected by it.

## **XII. Revocation of contract**

If the provision of services is not in compliance with the agreement, or upon default of the seller, the buyer is authorized to revoke the contract after a grace period of 14 days - without prejudice

to assertion of further claims. Revocation by the buyer can be declared even for a part of the contract alone and regardless of whether the seller is responsible for the default.

If the seller initiates bankruptcy proceedings, the buyer can immediately withdraw from the contract if the termination of the contract is vital for avoiding serious personal or economic disadvantages of the buyer or if the termination is due to an important reason pursuant to § 25a para 1 Insolvency Act. After the expiry of six months from the commencement of insolvency proceedings, the termination can take place even without the existence of serious personal and economic disadvantages or an important reason.

If the initiation of insolvency proceedings is rejected due to lack of funds to cover the expenses, the buyer can immediately withdraw from the contract.

## **XIII. Rescission of the contract**

The assertion of claims by the seller due to Laesio Enormis, mistakes or omission of the underlying basis of the contract is excluded.

## **XIV. Intellectual property**

1. Any right of use and trademark rights for the supply or services are settled with the agreed purchase price or wages, so that the buyer is authorized to use, publish, and resell the supply or service in an unrestricted manner. In particular, the seller must also ensure that the buyer has not intervened in foreign rights as a result. Rights to inventions made in the context of the business relationship are the privilege of the buyer without the seller having any claims for compensation in this regard. If patents or trademark rights of third parties are required in the fulfilment of the supply or service, the seller is obliged to already inform the buyer separately about this in writing during submission of bids.
2. For deliveries of electronic components with programming or generally for software solutions, the source code including function description must be provided with the first delivery. The functional description should be designed to the extent where a competent person can understand the source code.
3. The seller agrees to provide the buyer with a test version for eventual tests before making any changes to existing software solutions or adaptations to existing software. No modification to existing software solutions is allowed without the written approval of the buyer.
4. Drawings, designs, samples, manufacturing instructions, company-internal data, tools, etc. that Buyer has given the seller for bid submission or for completion of an order, remain the buyer's property. Such material may not be used, reproduced or disclosed to third parties for other purposes and must be preserved with the diligence of a prudent businessman. All the above documents and tools can be reclaimed by the buyer at any time and in any case, must be returned to us immediately unasked if the contract is not concluded. The seller agrees to keep confidential vis-à-vis third parties any knowledge acquired from the business relationship.
5. If the seller violates any of the obligations stipulated in points 1-4, the seller shall indemnify and hold harmless the buyer for any ensuing damages or other negative consequences.

## **XV. Compliance with Laws and Regulations**

1. The Supplier shall at all times comply with all laws, regulations and ordinances applicable to this Agreement including but not limited to all labour and environmental laws
2. REACH: The Supplier declares that he will comply with the provisions of Article 33 of the REACH Regulation (Regulation (EC) No. 1907/2006), in particular that he will provide BAUR with information on SVHC substances included in the REACH SVHC Candidate List, if such a

substance is present in Goods to be delivered by the Supplier with more than 0.1 percent by weight.

3. In addition to the regulations in point (a) of this Article, the Supplier - located in the EU - fulfils the obligations of Article 9(1) of Directive 2008/98/EC (Waste Framework Directive) by reporting Goods (including packaging material) containing more than 0.1% by weight of a substance on the REACH Candidate List to ECHA for the SCIP database. Beyond that, the Supplier shall provide BAUR with the SCIP notification number so that BAUR can base their own SCIP notifications on it. If the supplier does not have a registered office within the EU, he is obliged to provide the information required for a SCIP notification free of charge.
4. RoHS: The Supplier declares that he complies with the regulations of Directive (EC) 2011/65/EU (RoHS Directive) and that the Goods (including packaging material) do not contain any RoHS restrictions above their limit value. If the concentrations exceed the limit values, the Supplier shall inform BAUR in writing prior to delivery.
5. EU Regulation according minerals originating from conflict-affected and high-risk areas: The Supplier declares that he strictly complies with the obligations arising from Regulation (EU) 2017/821 and provides BAUR with a corresponding written declaration at first request.

#### **XVI. Duty of secrecy**

1. The seller shall treat all data, information and documents given during the business relationship as confidential and make sure that such information is not disclosed to third parties. Accordingly, the seller is also obliged to especially secure its computer system and its data transfers according to the state of the art so that third parties cannot access any data of the buyer available with the seller. The seller will use any known data, information and documents solely for the purpose of order processing with the buyer.
2. The buyer is entitled to announce publicly the business relationship between the buyer and the seller and to also use the company name and logo of the seller for this purpose. The seller is authorized to disclose the business relationship to any third party only after express written consent of the buyer in individual cases.
3. The duty to secrecy according to point 1 and 2 shall continue unlimited, thus in particular also for the period after eventual termination of the business relationship between the buyer and seller. The seller is liable for obliging its employees as well as other vicarious agents and subcontractors to maintain confidentiality.
4. If the seller violates any of the obligations stipulated in points 1 to 3, the seller shall indemnify and hold harmless the buyer for any resulting damages or other negative consequences.

#### **XVII. Salvatorius clause**

The validity of the remaining provisions shall remain unaffected by the invalidity or nullity of any provisions of the contract or these purchase terms and conditions. The invalid provision shall be replaced by a valid provision, through which the purpose strived for by the invalid or void provision can be best achieved.

#### **XVIII. Applicable law, place of performance and jurisdiction**

1. Austrian law applies exclusively to all relationships with BAUR. The application of the UNCITRAL agreement of the United Nations on contracts for the international purchase of goods is excluded.
2. Place of delivery for all mutual obligations between the disputing parties is the head office of the buyer regardless of other agreements on the delivery and payment terms.
3. The competent court in 6800 Feldkirch, Austria, is responsible for the decision of all disputes arising from the drawings - including those regarding its existence or non-existence - for partners who have their headquarters within the European Union or EFTA. As long as this court has not yet been called in a concrete dispute, BAUR is, however, entitled to call another court responsible for the vendor in this dispute.
4. With all contracting parties whose registered office is outside the European Union or EFTA, all disputes arising

out of or in connection with the relationship shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration is 6800 Feldkirch, Austria. The language to be used in the arbitration proceedings shall be the respective contractual language, i.e. German or English. However, as long as the court of arbitration has not yet been called upon in a concrete dispute, BAUR is entitled to call upon an ordinary court responsible for the vendor in this dispute.

#### **XIX. Amendments to the general terms and conditions of purchase**

The buyer reserves the right to change these general terms and conditions of purchase at any time, whereby the new version is valid for all future contracts after publication on the buyer's website [www.baur.eu](http://www.baur.eu).