



## Terms and conditions of purchase

April 2018

### 1. General information

Our general conditions of purchase apply to business dealings with suppliers, service providers and their subcontractors. Terms and conditions of business and agreements between our business partners differing from our general terms and conditions of purchase shall only be recognised to the extent that we have given our consent in writing. Acceptance and payment of goods or services of the supplier does not imply acceptance of its conditions.

### 2. Contracts and amendments to contracts

- 2.1. Orders, delivery schedules and contracts, as well as their adjustments, generally require written form.
- 2.2. Verbal agreements require written confirmation by Böcker Maschinenwerke GmbH in order to be effective.
- 2.3. The written form by means of remote data transmission; email or fax is sufficient.
- 2.4. Cost estimates and offers are binding and free, unless otherwise agreed.
- 2.5. Orders are to be confirmed within 48h. If the supplier does not accept them within one week of receipt, we are entitled to revoke them. Requested missing order confirmations are considered negatively in our supplier evaluation. The weight, country of origin and the customs tariff number are also to be indicated on offers and order confirmations.
- 2.6. Delivery requests within the scope of order and schedule planning become binding if the supplier does not object within two working days from receipt.

### 3. Delivery/Consequences of schedule deviations

- 3.1. Deviations from our contracts and orders are only permitted after our prior written confirmation.
- 3.2. Agreed dates and deadlines are binding. Decisive for the observance of the delivery date or the delivery period is the receipt of the goods or the completion of the service at our premises or the designated destination. The supplier shall provide goods on time, which are not covered by the "DDP", "DAT" or "DAP" clause of the Incoterms 2010, taking into account the time for loading and shipping which is to be agreed with the freight forwarder.
- 3.3. For services (installation/assembly), the supplier shall bear, subject to differing arrangements, all necessary ancillary costs, such as travel expenses, the provision of tools as well as allowances.
- 3.4. If agreed dates are not adhered to, the statutory provisions shall apply. Any circumstances which render their observance impossible or delayed, must be communicated immediately and without delay to the purchasing department of Böcker Maschinenwerke GmbH.
- 3.5. The unconditional acceptance of the delayed delivery or service does not constitute a waiver of the claims for compensation due to us as a result of the delayed delivery or service. This shall be valid until the full payment of the charge owed by us for the affected delivery or service.
- 3.6. Partial deliveries require the prior and written consent of the purchaser.
- 3.7. For quantities, weights and measurements, the values determined by us at the incoming goods inspection are decisive, subject to any other proof.
- 3.8. The purchaser is granted the right to use the software that is included in the scope of delivery, including the documentation, with the agreed features and to the extent required for the contractual use of the software or that is permitted by law (clause 69a ff. UrhG).
- 3.9. The supplier shall check the software before it is delivered or installed on the system of a customer or its end users for viruses, trojans and other computer malware by up to date, commercially available antivirus programmes.

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### 4. Force Majeure

- 4.1. Force majeure, interruptions of operations for which we are not responsible, labour disputes, unrest, official measures and other unavoidable events release us from the obligation of timely acceptance for the duration of their existence. During such events as well as within two weeks after their ending, we are entitled, notwithstanding our other rights, to withdraw from the contract in whole or in part insofar as these events are not of a negligible duration and our demand is significantly lowered due to the procurement from other sources as required by these circumstances

### 5. Shipping note and invoice

The details in our orders and delivery requests apply. The invoice is to be sent as a single copy, indicating the invoice number and other allocation characteristics to the respective printed address; it may not be attached to the consignments.

### 6. Pricing and transfer of risk

If no special agreement is made, the prices are understood to be delivered at the designated location (DDP according to Incoterms 2010) including packaging. The supplier shall bear the risk of material damage until the acceptance of the goods by us or our commissioned agents at the place where the goods are to be delivered in accordance with the order. This does not include statutory VAT.

### 7. Payment terms

Unless a special agreement has been made, settlement of the invoice will be made either within 14 days with the deduction of 3% discount, within 30 days with the deduction of 2% discount or within 60 days without any deduction, from the date when the payment claim becomes due and the receipt of both the invoice and the goods or rendering of the service. Payment is made subject to the invoice verification.

### 8. Claims for defects and recourse

- 8.1. The acceptance is subject to an examination for absence of defects, in particular also for correctness and completeness, insofar as and as soon as this is practicable according to the proper course of business. Defects are to be immediately reported by us after discovery. In this respect, the supplier waives the objection of the delayed notification of defects.
- 8.2. In the event of a material defect or legal deficiency, the purchaser shall be entitled to the statutory claims for defects in full, unless otherwise agreed.
- 8.3. The right to choose the type of subsequent rectification is always granted to Böcker Maschinenwerke GmbH. The supplier can refuse the type of subsequent rectification chosen by us if it is possible only at disproportionate effort and expense.
- 8.4. Should the supplier, upon request by the purchaser, not start immediately with the subsequent rectification of the contract, meaning the remedial action or replacement delivery, in urgent cases especially for the prevention of dangers or for the purpose of preventing or reducing damage, the purchaser is entitled to carry out the type of subsequent rectification selected by the purchaser or to have it done by a third party at the expense of the supplier. The purchaser has the same right in case of failure or refusal of the remedial action or replacement delivery.

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- 8.5. If the purchaser is subject to a claim by a third party, because in connection with the delivery/service of the supplier the rights of third parties are violated, the supplier is obligated to release the purchaser from these claims upon first written request.
- 8.6. Claims for defects shall become statute barred after 36 months, except in cases of fraudulent intent, unless the item has been used for a building, in compliance with its customary use, and has caused the defectiveness thereof. The limitation period starts with the delivery of the object of the contract (risk transfer).
- 8.7. If the supplier fulfils its obligation of subsequent rectification of the goods by way of replacement, the limitation period commences once again after the delivery of the goods delivered as a replacement.
- 8.8. The supplier undertakes to bear the costs incurred by the purchaser for the installation and removal as well as the transport costs to/from the place of use in cases where the defective delivery/service is proven to be the cause of such costs. The purchaser therefore recommends the supplier to take out a special liability insurance for installation and removal costs as well as transport costs to/from the place of use, the cover sum of which should be at least € 150,000.00 per individual case.

### 9. Quality assurance

- 9.1. The supplier undertakes to ensure the permanent quality assurance of its products by the application of a suitable quality assurance system, e.g. DIN EN ISO 9001 ff or equivalent, or specified by the purchaser, during and after the manufacture of its goods.
- 9.2. The purchaser has the right to request proof of the quality assurance system of the supplier and to convince itself of the way of performing the tests and controls on site, including subcontractors, in addition to carrying out an audit in the supplier company.
- 9.3. The supplier shall notify the purchaser without delay and without being requested of any changes in the composition of the processed materials or the constructive execution of its deliveries or services. Amendments require the written consent of the purchaser.
- 9.4. The quality assurance guidelines/quality assurance agreements notified to the supplier by the purchaser are regarded as supplementary elements of the contracts.

### 10. Right of withdrawal and termination

- 10.1. We are entitled to withdraw from or terminate the contract with immediate effect beyond the statutory right of withdrawal, if
  - the supplier has ceased to supply its customers,
  - a substantial deterioration in the financial situation of the supplier threatens or may threaten to occur and thereby the fulfilment of a delivery obligation concerning us is endangered,
  - the supplier is in breach of insolvency or over-indebtedness, or
  - the supplier discontinues its payments.
- 10.2. We are also entitled to withdrawal or termination of the contract if the supplier requests the opening of insolvency proceedings regarding its assets or a similar process for the settlement of debts.
- 10.3. If the supplier has performed a partial service, we are entitled to withdraw from the entire contract only if we have no interest in the partial service.
- 10.4. Insofar as we withdraw from the contract or terminate the contract due to the above contractual withdrawal or termination rights, the supplier shall compensate us for the damages resulting from this, unless it is not responsible for the emergence of the right to withdraw or terminate.
- 10.5. Legal rights and claims governed by the provisions set out in clause 10 are not restricted

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### 11. Performance of work

Persons performing work on the factory premises in fulfilment of the contract shall comply with the provisions of our company regulations. Liability for damages to these persons on the factory premises is excluded, insofar as this was not caused by intentional or grossly negligent breach of duty by us, our legal representatives or our vicarious agents. The above liability limitations do not apply and we are also liable for negligence if life, body, health or a substantial contractual obligation has been violated. Contractual obligations are those whose fulfilment is the only way to enable the proper fulfilment of the contract and the compliance with which the supplier trusts or may trust. In the event of a breach of a contractual obligation, the claims for damages are limited to the foreseeable, typically occurring damage. In addition to the statutory provisions, the "Rules of conduct for third party companies" of Böcker Maschinenwerke GmbH applies to third party companies on our premises. This must be countersigned by third parties before the performance of any activities.

### 12. Supplies

Materials and parts provided by us. Containers and special packaging remain our property. These may only be used for their intended purpose. The processing of materials and the assembly of parts takes place on our behalf. It is understood that we are co-owners of the products made using our materials and parts which are kept for us by the supplier, in the proportion of the value of the supplies to the value of the whole product.

### 13. Documentation and confidentiality

13.1. All commercial or technical information made available by us (including characteristics, which may be obtained from objects, documents or software, and other knowledge or experiences), insofar as they are demonstrably not publicly known, are to be kept confidential from third parties and may be made known in the business of the supplier only to those persons who must necessarily be consulted for the purpose of the supply to us and who are also obligated to maintain confidentiality. This information remains our exclusive property. Without our prior written consent, such information may not be reproduced or used commercially, except for deliveries to us. Upon our request, all information obtained from us (including copies or records), including any items handed over on loan, must be returned to us or destroyed without delay.

We reserve all rights to such information (including copyrights and the right to register industrial property rights, such as patents, registered designs, etc.). Insofar as these were made available to us by third parties, this reservation of rights also applies to these third parties.

13.2. Products made according to our designs, such as drawings, models and the like, or according to our confidential data, or with our tools or reconstructed tools, shall not be used by the supplier, nor offered or delivered to third parties.

### 14. Product liability

14.1. Insofar as the supplier is responsible for damage outside the delivered goods and the purchaser is claimed on the basis of statutory product liability, the supplier shall be obligated to release the purchaser from claims for damages on the part of third parties on the first demand, as the cause of the damage lies within the area of responsibility of the supplier and it is liable in the external relationship.

14.2. Within the scope of its liability pursuant to section 14.1, the supplier shall also be obligated to reimburse any expenses incurred by the purchaser resulting from or in connection with a warning or recall action carried out by the purchaser.



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The purchaser shall inform or agree with the supplier, as far as is possible and reasonable, the content and scope of the measures to be implemented.

- 14.3. Böcker Maschinenwerke GmbH recommends the supplier to maintain a product liability insurance to cover the risks set out in section 14.1 and 14.2. The cover sum should be at least € 1M (one million Euro) per claim.

### 15. Export control and customs

The supplier is obligated to inform us in its business documents of any approval requirements for (re-) exporting its goods in accordance with German, European, US export and customs regulations as well as the export and customs regulations of the country of origin of its goods. For this purpose, the supplier shall provide the following information at least in its offers, order confirmations and invoices for the relevant goods items:

- The export list number in accordance with Annex AL of the German foreign trade regulation or comparable list items of relevant export lists,
- For US goods the ECCN (Export Control Classification Number) according to the US Export Administration Regulations (EAR),
- the commercial policy of the origin of its products and the components of its goods, including technology and software, whether the goods are transported through the USA, manufactured or stored in the USA, or manufactured using American technology.
- (HS-Code) of its goods, as well as a contact person in its company to clarify any queries from us.

- 15.1. At our request, the supplier is obligated to notify us in writing of all further foreign trade data concerning its goods and its components, as well as to inform us immediately in writing about all changes to the above data (before delivery of the corresponding goods affected).

### 16. Code of Conduct / Occupational Safety / Environmental Protection

- 16.1. In the context of its business responsibility, the supplier is committed to respect the legal provisions, including the laws for the protection of the environment, in connection with the production and distribution of its goods or the rendering of its services, labour regulations and laws to maintain the health of its employees, in addition to the non-tolerance of child and forced labour. In addition, the supplier confirms, by accepting the order, that no form of bribery or corruption is permitted or tolerated by it.
- 16.2. In addition, the supplier shall ensure that its deliveries and services meet the applicable environmental protection, accident prevention and occupational safety regulations at the premises of the purchaser or any other place of performance, as far as notified in advance by the purchaser, as well as other safety or technical related regulations, so that the negative impact on humans and environment is avoided or reduced. For this purpose, we recommend the supplier to implement and further develop a management system, such as according to DIN EN ISO 14001 or equivalent type.
- 16.3. When dealing with the awarding of contracts, we believe that the energy efficiency of the offered products, machines, equipment and services is just as crucial as the economic aspect. Concerning this matter, we recommend our partners to integrate and further develop a management system meets the requirements of the energy management DIN EN ISO 50001, for instance.
- 16.4. The relevant provisions concerning the handling and placing on the market of dangerous substances, which for example are in The European Chemicals Ordinance (REACH), the Chemicals Act and the Ordinance on Hazardous Substances must be complied with and applied.
- 16.5. If necessary, the purchaser has the right to demand proof of the management system operated or to audit the supplier in this case.

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16.6. In the event that a supplier repeatedly and/or despite a corresponding notification behaves in violation of the law and does not prove that the offence was resolved as far as possible and that appropriate arrangements were made for the future avoidance of legal violations, we reserve the right to withdraw from existing contracts or to terminate such contracts without notice.

### 17. Place of performance

The place of performance is the place where the goods are to be delivered according to the order or at which the service is to be rendered.

### 18. General provisions

- 18.1. Should a provision of these terms and the further agreements made be or become invalid, this shall not affect the validity of the remaining provisions. The contract partners are obligated to replace the invalid term with a term that comes as close as possible to the economic purpose of the invalid term.
- 18.2. The contractual relations shall be subject exclusively to German law, with the exclusion of the conflict of laws provisions and the UN purchase law (CISG).
- 18.3. Jurisdiction in all disputes arising directly or indirectly from contractual relationships on which these terms of purchase are based is the district court responsible for Werne, or, depending on the value in dispute, the district court Unna. We are also entitled to sue the supplier at our discretion at the court of its registered office or branch office or at the court of the place of performance.

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