

# Terms and Conditions of Purchase of ebm-papst

## 1. General

(1) Our Terms and Conditions of Purchase shall apply exclusively unless otherwise stipulated in our orders. Contradicting conditions stipulated by the supplier shall not be binding upon us even if we do not expressly object to those conditions or if we accept the delivery without making reservations.

(2) If individual provisions of these Terms and Conditions should be or become ineffective, the validity of the other provisions shall not be affected thereby.

## 2. Order and order confirmation

(1) Our orders shall not be binding unless they have been placed by us in written or electronic form. If a written order confirmation is not received by us within a period of two weeks from the order date, we reserve the right to withdraw the order without any obligation to us.

(2) In case of an order value below EUR 100, the supplier's invoice shall be regarded as order confirmation if it corresponds to our order.

(3) Quotations shall be binding and shall not be remunerated by us unless expressly agreed otherwise. The supplier shall advise us in an explicit and clearly visible way of any deviation of its order confirmation from our order.

(4) We shall be entitled, even after conclusion of the contract, to demand changes in the contractual object to the extent that the supplier can reasonably be expected to accept them. The effects of such contractual changes, especially with respect to any increase or reduction in costs and any postponement of delivery dates, shall be adequately considered by both parties.

## 3. Blanket orders and delivery schedules

(1) For longer-term planning, we shall place blanket orders or delivery schedule contracts based on rolling demand forecasts which shall be regularly sent to the supplier. The binding effect of our orders is based on separate master agreements, delivery schedules and the corresponding call-offs which are agreed with the suppliers or notified to them by us as a purchaser-side performance specification pursuant to Section 315 BGB (German Civil Code).

(2) Unless shorter deadlines have been agreed elsewhere (e.g. Kanban call-offs), the call-offs shall become binding at the latest when the supplier does not contradict in writing within five days of receipt.

(3) Orders shall become binding if within five days the supplier neither contradicts in writing nor sends a deviating order confirmation.

## 4. Order number, supplier number, item number

In order confirmations, invoices, delivery notes and other documents, including any electronic communication, our complete order number, purchase group, supplier number, and material and drawing numbers shall be given for each purchase item and each service. In case this information is missing, we shall reserve the right to reject deliveries and invoices.

## 5. Description of performance

(1) The supplier shall manufacture the contractual product or perform the agreed service in accordance with the technical and/or other documents applicable from time to time.

(2) The supplier shall be fully responsible for the manufacturing of tools, devices and other operating resources to the extent that these are required for manufacturing the contractual product, even if it has them manufactured by third parties. The supplier shall store and deploy the tools on our behalf and according to our instructions. Ownership of the tools shall pass to us upon full payment. The supplier shall prepare a complete documentation of the tools and make it available to us in a form to be agreed.

(3) The documents (sketches, drawings, samples, models etc.) pertaining to the order shall be binding upon the supplier; however, the supplier shall examine such documents for discrepancies without delay and in a professional manner and immediately notify us in writing of any discovered or presumed errors.

(4) Any documents (sketches, drawings, samples, models etc.) and information delivered or paid by us shall remain our property. They shall not be made available or accessible to third parties and shall not be used for deliveries to third parties without our prior written consent. Sub-suppliers shall be subjected to equivalent obligations.

## 6. Compliance with laws and standards

(1) By accepting an order, the supplier agrees to comply with all relevant statutory provisions applicable in the country of manufacturing and sale. These include all safety and environmental regulations, including the handling of hazardous substances, electricity, and electromagnetism.

(2) If the supplier has the contractual product or parts thereof manufactured by third parties, the provisions in (1) shall apply correspondingly. The supplier shall be responsible to us for the compliance with the mentioned provisions of the supplier's sub-suppliers and other third parties used by the supplier to fulfill its contractual obligations.

(3) We expect our suppliers to meet their societal and social responsibility. The supplier agrees to comply with the Responsible Business Alliance (RBA) Code of Conduct available for download and display on the RBA web site <http://www.responsiblebusiness.org/>.

(4) Compliance with the above provisions, including but not limited to the RBA Code of Conduct, shall be a material contractual obligation for the supplier. According to court rulings, an obligation is to be considered a material contractual obligation if its fulfillment is a precondition for the proper performance of the contract and if the counterparty may generally rely on its fulfillment.

(5) ebm-papst is entitled to review the supplier's compliance with its obligations under the Code of Conduct at its business premises during normal business hours. The prerequisite for the review is the prior agreement of an appointment, which the supplier must grant within two weeks of being requested to do so.

(6) In case of disregard of the above rules, the supplier shall be obliged to refund us for any costs, losses and other disadvantages arising therefrom. Disregard of the above rules shall entitle us to extraordinary termination of the contract by applying Section 314 BGB with the necessary modifications.

## 7. Packaging

Unless agreed otherwise, any necessary packaging materials shall be provided by the supplier on the basis of the packaging instructions sent to the supplier.

## 8. Delivery, passing of risk, place of acceptance

(1) Delivery shall be made by the mode of dispatch indicated in the order.

(2) The risk shall pass when the goods are accepted at the agreed place of performance. If INCOTERMS deviating from this have been agreed for the deliveries, the risk shall be subject to the provisions of that clause.

(3) Shipment shall be made to the place of acceptance prescribed by us (usually to the incoming goods area of the plant indicated in our order).

(4) Each delivery shall be accompanied by a delivery note or packing slip complying with the requirements indicated in Clause 4. In case these are missing, we shall reserve the right to reject the delivery if we cannot be reasonably expected to accept it. If any deliveries not accepted by us or any faulty goods are sent back, the return transport

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shall be at the supplier's risk and expense. The value of the return shipment shall be charged to the supplier. This shall not place us in default of acceptance.

## 9. Prices, transport insurance, and terms of payment

(1) The prices are understood to be fixed prices, free our place of acceptance, including packing and other incidental expenses. This shall not apply if anything different has been explicitly agreed elsewhere or if we have explicitly consented to a price escalator clause or a price proviso.

(2) Transport insurance shall be covered by us.

(3) Immediately upon delivery, invoices shall be submitted to us in duplicate, separately from the delivered item and separately for each order.

(4) Unless agreed otherwise, we shall make payment with a 3% discount within 14 days, with a 2% discount within 24 days, or net within 30 days from receipt of the goods and the invoice. Payment shall be effected subject to invoice checking and subject to the complete delivery of the goods or the complete performance of the service. Our payment shall not be a confirmation of the fulfillment of the supplier's contractual obligations.

(5) The supplier shall be obliged to refund any overpayment to us; with respect to this obligation the defense of limitation or cessation of enrichment shall be excluded.

(6) We shall be entitled to offset claims of the supplier also against claims of enterprises affiliated with us. Offsetting shall be admissible also if the claims or counterclaims are not due yet. In this case, invoicing shall be based on the value date.

## 10. Delivery deadline and delay

(1) All delivery dates agreed or indicated by us pursuant to Section 315 BGB shall be binding. Premature deliveries shall be admissible only with our prior written approval. The supplier shall immediately notify us in writing of any delay in delivery, indicating the reasons and the duration of the delay. The supplier shall be obliged to immediately notify us of any problems with delivery dates before they become imminent and provide suggestions for remedial action.

(2) To the extent that this is helpful, we shall be entitled to contact the supplier's sub-supplier to prevent any imminent delay in delivery.

(3) The supplier may not plead a failure on our part to deliver any required documents, data, supplies etc. unless the supplier has reminded us in good time and in writing to provide them but has not received them within an appropriate period of time.

(4) If the agreed delivery deadlines are not complied with, we shall be entitled to a penalty of 0.5% of the order value for each completed week of delay, up to a maximum of 10% of the order value, unless the supplier is not responsible for the delay. Any delay of the supplier's sub-suppliers is part of the supplier's risk. The penalty reservation may also be declared by deducting the incurred penalty from the consideration owed when the next payment falls due. Our statutory claims based on the delay in delivery shall remain unaffected. The incurred penalty shall be set off against any claims for damages for non-performance.

(5) Additional expenses incurred for an accelerated transport which is required to comply with delivery deadlines shall be borne by the supplier if this is necessary to avoid higher damages for delay. The supplier shall record such additional expenses and notify us of them in an orderly fashion no later than on 31 January with respect to the preceding calendar year.

(6) Force majeure, industrial disputes, operating interruptions for which we are not responsible, measures taken by public authorities, and other unavoidable events shall entitle us – without prejudice to our other rights – to withdraw from the contract wholly or in part, provided that such interruptions are not of a negligible duration and result in a sub-

stantial reduction of our demand or that the performance is no longer exploitable in a way which is reasonably acceptable for us in economic terms.

## 11. Quality, procedures for production and product approval

(1) The supplier shall be obliged to ensure the quality of the contractual products as well as the required preproducts by taking appropriate measures in accordance with ISO 9001 and, where applicable, the QM system standard IATF 16949.

(2) In manufacturing the contractual products for delivery to us, the supplier shall comply with the QM standards mentioned in (1) and confirm to us in writing the acknowledgement of such standards. The supplier shall be responsible for the quality of the goods delivered and/or manufactured by the supplier without exception, even if we offer or render assistance to the supplier.

(3) Changes in the contractual object, the materials used, and the production and test procedures, shall not be permissible without our prior written consent.

(4) If requested by us, the supplier shall, as part of the product approval procedure pursuant to the QM standards mentioned in (1), submit initial samples from serial tools on time for inspection, together with all required documents.

(5) If more than two sampling inspections are necessary for reasons for which the supplier is responsible, we shall reserve the right to withdraw from the contract.

(6) We and/or our customers shall be entitled to audit the supplier's quality management system at the supplier's premises.

(7) Apart from this, the supplier shall comply with the state of the art in science and technology, the safety regulations, and the agreed technical data. With respect to materials which, based on laws, regulations, other provisions, or due to their composition or their environmental impact, require special packaging, shipment, storage, usage or disposal, the contractor shall submit with its offer a completely filled-in safety data sheet according to DIN 52900 and an applicable accident procedures sheet (transportation). In case of changes in the materials or the legal situation, the contractor shall submit updated data and procedures sheets without further request.

## 12. Provision of items

(1) The supplier shall be liable for any damage, loss or misuse of provided items for which the supplier is responsible. If any provided parts or materials are not processed in conformity with the contract, the supplier shall, irrespective of other claims, compensate us not only for the cost of the provided parts and their procurement, but also for the value of the finished contractual products unless the supplier proves that the loss incurred by us is smaller.

(2) We reserve an extended retention of title with respect to any provided parts and manufacturing facilities, including but not limited to tools, moulds and other capital equipment, as well as services. These include also manufacturing facilities and services which are procured by the supplier itself for producing the contractual product or the service, but are paid by us. Products and services shall continue to be owned by us at any processing stage.

(3) With respect to the processing of items owned by third parties, we shall be entitled to pro-rata co-ownership of the newly manufactured item based on the value of the item supplied by us in relation to the total value of all items used for manufacturing plus the expenses incurred by the supplier.

(4) Manufacturing facilities owned by us are intended exclusively for use on our behalf and shall at all times be kept in an operable condition and maintained by the supplier and insured at replacement value against loss by fire, water, and theft at the supplier's own expense. The objects shall be labeled as our property.

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(5) We shall be entitled at any time to demand the return of some or all of the parts or manufacturing facilities. If we instruct such return to take place, the supplier shall be obliged to carry out this instruction without delay and at first request. The supplier shall be entitled to reimbursement of any associated necessary costs of transport, freight, and packaging.

## 13. Warranty and notice of defect

(1) The supplier shall be liable subject to the provisions of law unless otherwise agreed below. The supplier shall warrant the careful and appropriate performance of the contract, and shall ensure particularly the compliance with the stipulated specifications and other rules of execution according to the state of the art in science and technology, as well as the quality and usefulness of the delivery with respect to material, design and execution, and of the documents pertaining to the delivery (operating instructions, drawings, plans, etc.). The agreed upon specifications shall be considered as warranted characteristics of the goods or services.

(2) The supplier's exclusive responsibility for the freedom of the contractual objects from defects shall not be limited by any official approval of documents or by our delivery or approval of drawings, calculations, and other technical documents. The same shall apply with respect to our instructions, suggestions, and recommendations unless the supplier objects in good time and in writing.

(3) A notice of defect shall be considered to be given in time if it is given, in case of externally visible defects, within 8 working days from receipt of the goods or, in case of hidden defects, within 8 working days from discovery of the defect by us or from notice being given by our customers. Defects which cannot be discovered by taking samples shall be considered as hidden defects.

(4) If the removal of the defect or the substitute delivery fail, we shall, after the expiration of an adequate period of time defined by us, be entitled, in addition to the statutory claims, to remove the defect ourselves, or to have it removed by third parties, at the supplier's expense in order to prevent acute dangers or to avoid greater damages.

(5) Return of rejected goods shall on principle be made "freight forward", debiting the supplier with the invoiced value of the goods.

(6) Claims for defects in quality shall be subject to a limitation period of 36 months from delivery to us unless the object was, in accordance with its usual usage, used for a building and caused the building to be defective.

For parts which are delivered as cure for defective parts under Sec. 439 German Civil Code, the period of limitation shall begin anew when the supplier has fully met our claims for cure under Sec. 439 German Civil Code.

(7) As part, and within the limits, of its statutory or contractual liability, the supplier shall be obliged to refund us for any costs arising in connection with a defect in quality, including those that are legitimately invoiced to us by our customers. In particular, such costs include the costs arising when tracing faults, removing defective parts, and installing replacement parts, as well as any costs for expert opinions, shipping, and sorting. In addition, the supplier shall pay for losses arising from business interruption at our own or our customers' operations, loss of profit, and other damages, if the loss has been caused by the defect of the contractual object for which the supplier is responsible.

(8) In case of defects in title, the supplier shall indemnify us from any third-party claims. This shall not apply to the extent that the supplier is not at fault. Claims for defect in title shall also be subject to a limitation period of 36 months.

(9) With respect to our supplier, the provisions in Sections 445a and 478 BGB shall apply even if the components purchased from the

supplier cause the intermediate or final product manufactured by us to be defective.

## 14. Confidentiality

The parties undertake to treat as business secrets all non-obvious commercial and technical details which become known to them through the business relationship, regardless of the type of transmission. Any drawings, models, samples, tools, and production resources provided to the supplier or produced by the supplier according to our specifications shall be treated as confidential and must not be disclosed to third parties without our prior written consent. The supplier shall not mention the business relationship in advertising without our express prior approval.

## 15. Third-party intellectual property rights

(1) The supplier shall be responsible for ensuring that no national or international rights of third parties, in particular intellectual property rights such as patents, trade marks, copyrights or utility models, are infringed in the context of delivering and using the contractual product. This shall not apply to the extent that the supplier is not at fault.

(2) If the supplier holds the intellectual property rights concerning the application of the contractual product delivered by the supplier, the supplier shall grant us a gratuitous right to co-use its intellectual property rights to the extent of the delivered contractual product, where this is required to accomplish the contractual purpose.

## 16. Liability, product liability, indemnification

(1) To the extent that the delivery or performance is defective, and to the extent that the supplier violates any contractual obligations of diligence, care, information, or other obligations or fails to meet binding deadlines (violations of contract), the supplier shall be liable to us for any losses resulting therefrom, without any necessity for additional evidence on the merits apart from evidence for the objective violation of duty, the causal connection with the loss, and the amount of the loss.

(2) To the extent that, pursuant to the provisions of law, the supplier's liability depends on it being responsible for the violation of contract, the supplier may free itself from liability by proving that it is not at fault. The supplier shall be responsible for faults of its vicarious agents and sub-suppliers in the same way as for its own faults. In that case, the supplier may not free itself from liability merely by proving that it has properly selected and supervised its vicarious agents and sub-suppliers.

(3) To the extent that the supplier is liable, it shall indemnify us against any corresponding third-party claims.

(4) In case of product-liability claims against us, the supplier shall be obliged to indemnify us against such claims if and to the extent that the loss was caused by a defect in the contractual object delivered by the supplier and to the extent that the supplier would be liable itself in an external relationship. In such cases, the supplier shall bear all costs and expenses, including the cost of any legal action both at home and abroad.

(5) Before initiating a recall which is wholly or partly the consequence of a defect in the contractual object delivered by the supplier, we shall notify the supplier, give it an opportunity to collaborate with us, and exchange with it views concerning an efficient implementation unless notifying or involving the supplier is impossible due to the special urgency of the matter, or not reasonably acceptable to us in view of the overall circumstances. To the extent that a recall is a consequence of a defect in the contractual object delivered by the supplier, the supplier shall bear the cost of the recall. If the supplier has caused the damage, it shall indemnify us from all costs, expenses, and damages. Apart from this, the provisions of law shall apply.

(6) Section 254 BGB shall apply, with the necessary modifications, to any compensation of damages between us and the supplier.

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## 17. Transferability and termination of the contract

(1) Any transfer of rights and obligations arising from the contractual relationship shall require our prior written consent. The supplier shall notify us immediately if extended property rights of third parties make it necessary to assign the claims arising against us.

(2) We are entitled, without prejudice to other termination or withdrawal rights, to terminate the contract or to withdraw from the contract wholly or in part if the supplier's creditworthiness or supply capability deteriorates in such a way that the fulfillment of the contract appears to be at risk, if the supplier stops its payment, and/or if insolvency proceedings against the supplier are opened or refused to be opened for insufficiency of assets.

## 18. Future differences

(1) The contractual parties undertake to conduct mediation proceedings with respect to any disputes arising in connection with the respective delivery contract or concerning the validity of that contract, excluding any recourse to legal action.

(2) Mediation shall be conducted pursuant to the mediation rules of the German Association of Business Mediation (DGMW, Deutsche Gesellschaft für Mediation in der Wirtschaft e.V.).

(3) The parties shall jointly designate the mediator and the venue for the mediation talks. If no agreement is reached with respect to the person to be appointed mediator or the venue for the mediation talks, these shall be designated by the chairperson of the DGMW. The appointment or designation shall be binding upon the parties.

(4) Each party shall bear half of the cost of the mediation proceedings unless agreed otherwise.

(5) If the parties fail to find a mutually satisfactory solution in the mediation proceedings, they shall be free to appeal to a state court of justice after conclusion of the proceedings. The conclusion of the proceedings shall be determined by the mediator.

(6) The agreement to conduct mediation proceedings shall not prevent the parties from conducting necessary summary court proceedings, including but not limited to asset-seizure proceedings and injunction proceedings.

## 19. International purchase contracts

(1) Cross-border contracts shall be subject to German substantive law and the provisions of the uniform United Nations Convention on Contracts for the International Sale of Goods (CISG) unless provided for otherwise in these General Terms and Conditions of Purchase and the individual orders and call-offs.

(2) In case of contradictions between them, the different contractual documents shall be applied in the following hierarchical order:

- a) individual orders
- b) delivery schedule call-offs
- c) General Terms and Conditions of Purchase of ebm-papst

(3) For filling any gaps as defined by Art. 7 (2) CISG, regard shall be had to the provisions of these General Terms and Conditions of Purchase and, on a subsidiary basis, the substantive law of the Federal Republic of Germany.

## 20. Place of performance, place of jurisdiction, applicable law

(1) The place of performance for the delivery shall be the delivery address indicated in our order.

(2) The place of jurisdiction shall be, at our discretion, the registered office of the ordering ebm-papst company or the supplier's place of jurisdiction.

(3) The law of the Federal Republic of Germany shall apply exclusively. The delivery clauses shall be construed according to the INCOTERMS as valid on conclusion of the contract.

(4) The place of performance for our payment obligations shall be any place at which we or one of our subsidiary companies maintain an account at a financial institution.

(5) Oral side agreements do not exist. Amendments, supplements and any other agreement shall only be made in writing. This also applies to the cancellation of the written form requirement. The written form requirement may only be waived or renounced by express written declaration, but not by implied agreements. Notifications by fax or by e-mail do not count as written form.

ebm-papst Mulfingen GmbH & Co. KG or  
ebm-papst St. Georgen GmbH & Co. KG or  
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