



# **General Terms and Conditions of Purchase of Brückner-Werke KG**

## **Section 1 Scope of Application**

All orders from us shall be subject exclusively to the following terms and conditions of purchase and procurement. Terms and conditions of the supplier that are contrary hereto shall, without our express objection being required, have no legal validity. Deliveries carried out shall be deemed to be agreement with our terms and conditions of purchase. The receipt of deliveries shall take place exclusively on our terms and conditions. References by the supplier to its own terms and conditions of business – in particular its terms and conditions of delivery – are hereby expressly objected to. They shall not be binding upon us even if we do not expressly object to the supplier's terms and conditions in the case of ongoing transactions in any individual case.

Side agreements or amendments to individual provisions shall require our express written confirmation.

## **Section 2 Placement of an Order**

Orders shall only be binding if they are placed by us in writing (by fax or email). Orders placed verbally shall only become valid when confirmed in writing (by fax or email). Additions or subsequent changes to an order shall require written confirmation (by fax or email).

## **Section 3 Order Acknowledgement**

Our orders shall be deemed accepted even without acknowledgement, unless the recipient of the order objects within 48 hours (2 working days) of receipt of the order. An acknowledgement deviating from the order shall be invalid as long as it has not been expressly approved by us in writing.

The quantities ordered may be exceeded or fallen below by more than 5 % only with our agreement.

#### **Section 4**

##### **Date for Delivery / Default in Delivery**

The delivery dates stated in the order or subsequently agreed upon for call-off orders shall be binding in respect of sub-quantities. Non-adherence to these delivery dates shall, without our having to set a grace period, entitle us, at our option, to demand delivery and/or rescind the contract as well as demand damages due to late performance or non-performance of the service.

The supplier shall inform us in writing without delay if circumstances under which the agreed delivery period cannot be met occur or become apparent to it.

If the supplier defaults on its delivery, we shall be entitled to demand flat-rate default-related damages at the rate of 1 % of the value of the goods per full calendar week, but no more than 5 % in total. We shall be fully entitled to further statutory claims.

If the seller can recognise that it is wholly or partly unable to meet its contractual duties or is unable to do so in due time, it shall notify us in writing without delay, stating the reasons. Our further rights shall remain unaffected hereby.

#### **Section 5**

##### **Insolvency / Cessation of Payment**

If insolvency proceedings concerning the seller's assets are applied for, or if the seller ceases its payments, pursues an out-of-court settlement or its financial circumstances materially deteriorate, we shall have the right to revoke the contract by unilateral written declaration without rights being derivable therefrom against us.

## **Section 6**

### **Prices**

The prices stated are fixed prices (net value of the goods excluding value-added tax) and include packaging. In the case of international payments, the buyer shall bear only the banking charges incurred in the Federal Republic of Germany.

## **Section 7**

### **Passage of Risk**

Unless otherwise agreed in writing, the delivery shall be made to the destination in accordance with our specifications "carriage-paid to destination".

All goods to be delivered to us shall travel to the place of performance on the seller's account and at the seller's risk. The seller shall adequately insure the goods against all transport risks.

## **Section 8**

### **Indemnification**

The seller shall indemnify us against all claims that are brought against us on the basis of the product liability laws or other legal bases due to a fault in the product procured by us from the seller and brought onto the market, and shall compensate us against all loss incurred upon us from such faulty products.

## **Section 9**

### **Invoice and Payment**

Invoices shall be sent directly to the client's address by post or digitally when the goods are dispatched and must contain the following details: freight parity, order number, carriage/truck/container or package number, type of packaging, weight etc.; value-added tax shall be indicated separately. Every order shall be charged separately. The amount invoiced shall be settled in accordance with the agreed terms and conditions. If our payment is delayed due to any conduct or event for which we are not at fault, we shall retain the right to claim a cash discount.

Unless otherwise agreed upon in writing, we shall pay the purchase price with a 3 % cash discount within 14 days of delivery and receipt of the invoice or net within 30 days.

We shall, to the statutory extent, be entitled to set-off and retention rights as well as the right to plead non-performance of the contract. In particular, we shall be entitled to withhold due payments as long as we are still entitled to claims against the seller on the basis of incomplete or defective services.

The seller shall have a right of set-off and retention only on the basis of counter-claims that have been determined by a final and non-appealable court judgement or are undisputed.

## **Section 10**

### **Notices of Defects**

The supplier shall carry out an outgoing goods inspection that serves the same purpose as the incoming inspection that is actually demanded by us in accordance with Section 377 HGB [German Commercial Code]. The supplier shall ensure that its liability insurance recognises the above change to the statutory provision concerning liability without the existing liability insurance cover being impaired as a result thereof.

The incoming goods inspection on our premises shall be limited to the following inspections:

- a) We shall inspect the supplier's consignments of goods for obvious transport damage. Obvious transport damage only includes damage that is detectable externally on the transport packaging (or the goods, unless they are specially packed) and possibly indicates damage to the content.
- b) We shall carry out an identity check during which the details on the delivery note will be compared with the content of the packaging and checked for incorrect deliveries or quantity errors. If the quantities of goods requested are packed in the transport packaging in subunits, we shall compare only the details of the delivery note with the information on the respective transport packaging. The goods movement certificate, which is issued by us and signed by the forwarder or carrier, and a copy of which is sent to the supplier by post, email or fax, shall be decisive for quantity deviations.
- c) We shall carry out random quality checks on the supplier's consignments of goods at irregular intervals; these random checks shall be documented.



If a defect becomes apparent during the above-described checks or at a later date, we shall give the supplier notice of the defect within 14 days. Apart from the aforementioned checks and notifications, we shall not be responsible for any further checks or notifications in relation to the supplier.

For all other defects in the goods delivered or for defects therein that subsequently become apparent, the supplier waives the plea of late notification of defects. The goods shall be deemed to be non-approved to this extent.

In all other respects, the provisions of Sections 377 and 379 Handelsgesetzbuch [German Commercial Code] as valid at the time of the conclusion of the contract shall apply, unless they are altered or waived in these terms and conditions.

## **Section 11**

### **Law on Foodstuffs**

The seller guarantees that the goods delivered by it, including their packaging, shall comply with the respective applicable provisions under German and EU law.

The seller shall immediately present to the buyer at the latter's request, free of charge, any and all corresponding test certificates and/or documents evidencing compliance with the above points. This shall also apply to the purchase of material that is purely packaging material, as well as to installations and parts of installations.

The seller guarantees that the goods delivered by it shall be traceable in a continuous and complete manner in accordance with the respective applicable legal provisions, in particular Regulation (EC) no. 178/2002, and any and all future provisions.

## **Section 12**

### **Third-party Property Rights**

No third-party property rights shall be infringed as a result of the service rendered and its exploitation by us. The contractor shall indemnify us against all claims arising from the use of such property rights, insofar as it is at fault for the infringement thereof.

### **Section 13**

#### **Product Liability**

The supplier shall effect adequate business and product liability insurance for the term of the contract or for the delivery date and present this insurance to us on request.

Insofar as the supplier is responsible for product damage, it shall indemnify us against third-party damage claims in this respect on first request. The supplier shall reimburse all expenditure ensuing from any loss, in particular product recalls, extra expenditure etc.

### **Section 14**

#### **Subcontractors**

Subcontractors shall only be called in if this has been communicated to us in writing beforehand, and we have consented thereto in writing. The supplier shall ensure that it also imposes upon the subcontractor all obligations that it has entered into in relation to us, and monitors compliance.

### **Section 15**

#### **Retention of Title**

Retention of title shall be recognised only until the respective invoice for the delivery concerned has been settled. Prolonged or extended retention of title is excluded, even if we do not expressly object thereto.

### **Section 16**

#### **Place of Performance and Place of Jurisdiction**

German law shall apply to all business relations between the seller and the purchaser. The provisions of UN sales law shall not apply.

The place of jurisdiction for all disputes of any kind shall be Hamburg. Brückner-Werke KG shall, furthermore, be entitled to file a suit at the location of the supplier.



## **Section 17**

### **Final Provision**

If a provision in these terms and conditions of business or a provision under other agreements is or becomes ineffective, this shall not affect the effectiveness of any other provisions or agreements. The contracting parties undertake to replace the ineffective provisions with effective provisions that reflect as closely as possible the intended objective of the provisions.

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