

# General Terms and Conditions for Purchase Orders



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To be used in all contractual relationships between BWT AQUA AG (hereinafter „Buyer“) and companies (hereinafter „Supplier“) for the delivery of Products or Services, or both.

## 1. Authoritative Conditions

- 1.1 The legal relationships between Supplier and Buyer shall be exclusively defined by the following Purchasing Terms and Conditions for Supply.
- 1.2 Any conflicting Terms of Supplier are hereby expressly excluded.
- 1.3 The unconditional acceptance of products including the documentation or services or both (hereinafter referred to uniformly as „Goods“) or the payment by Buyer without reservation does not constitute the acceptance of Supplier's General Terms and Conditions in any case.
- 1.4 All performances to be provided by Supplier within the stipulations of this Purchase Order shall be considered as "Scope of Work"
- 1.5 These Purchasing Terms and Conditions are also applicable to all future business with Supplier.

## 2. Conclusion and scope of contract

- 2.1 Buyer agrees to make its purchase order subject to these conditions (Purchase Order). Supplier has to declare acceptance of the Order without reservation within 5 working days (Order Confirmation); otherwise Buyer will no longer be bound to the Order.
- 2.2 In the event that the Buyer issues a Purchase Order based on a binding offer from the Supplier, the General Terms and Conditions for Purchase Orders of the Buyer apply.
- 2.3 By the delivery of the Goods Supplier agrees to these Terms and Conditions provided that no written agreement otherwise exists.
- 2.4 Any change to the agreed Scope of Work subsequent to the conclusion of the contract requires confirmation by Buyer in writing to be valid.
- 2.5 Supplier must examine Buyer's requirements and must warn Buyer immediately in writing of obstacles to the proper fulfillment of the contract prior to commencement.
- 2.6 Supplier assures that the Goods delivered by Supplier is free from defects, that the assured properties are existent, and that they comply with Buyer's requirements and with Buyer's intended purposes by the contract. Supplier guarantees a complete inspection of goods prior to shipment in order to supply in quality free from any defects.
- 2.7 The place of delivery and the place of final use of the Goods may diverge. Decisive in such case is the specification in Buyer's Purchase Order.
- 2.8 Buyer may request reasonable changes to the Scope of Work with regard to construction and realization. The consequences thereof, particularly with respect to additional or reduced costs as well as delivery dates must be agreed reasonably and amicably.

## 3. Prices, payment

- 3.1 The prices agreed are firm prices. Within the European Union (EU), the prices shall be deemed as agreed to be DDU. However, outside of the EU, the prices shall be deemed to be agreed DDP (INCOTERMS 2000). The prices shall be deemed to include packaging and to be excluding statutory value added tax. All other local taxes or fees assessed or levied on the Buyer are to be borne by the Supplier. The Buyer shall be entitled to withhold any applicable withholding taxes from payments.
- 3.2 Cost estimates, offers, or both, shall be legally binding and free of charge, unless anything otherwise has been agreed in writing. If Supplier has assumed the assembly or the installation, Supplier shall bear all necessary ancillary expenses unless otherwise agreed.

- 3.3 Invoices are paid by the Buyer at the 1st or 15th or on the subsequent working day of a month. Without specific agreement, Buyer pays (Payment Term), either within 60 days without deduction or within 21 days minus a cash discount of 3 %, upon receipt of invoice and upon delivery, respectively fulfillment of the Scope of Work. The payment is made with the reservation of invoice verification. Possibly agreed and rendered installments shall not be deemed as an admission of the statement of account.

3.4 In the event of acceptance of premature deliveries, the Payment Term shall be based on the originally agreed delivery date.

## 4. Delivery, time limits, default in delivery, execution by substitution, contractual penalty

- 4.1 Agreed dates and time limits are legally binding. Decisive for the observance of the date of delivery or the delivery period is the receipt of the Goods including complete documentation at the agreed place of delivery.
- 4.2 Supplier has to make the Goods available in good time considering the customary time for loading and shipment. Supplier has to coordinate with the shipping company of Buyer in cases where no DDP/DDU/CFR/CPT has been agreed.
- 4.3 Partial deliveries are inadmissible, unless Buyer has agreed expressly to such.
- 4.4 If agreed dates for reasons solely attributable to Supplier are not observed, Supplier is in default. The statutory provisions apply, unless otherwise agreed in accordance with the terms following hereinafter.
- 4.5 Unconditional acceptance of a late delivery or performance does not constitute any waiver of claims for compensation Buyer is entitled to due to the late delivery or performance.
- 4.6 If Supplier anticipates difficulties which may hinder Supplier from on time delivery or from the delivery in the agreed quality, Supplier must inform Buyer immediately in writing by stating the reasons.
- 4.7 In the event of a default Buyer must set a reasonable time limit for subsequent delivery (Grace Period). Irrespective of the foregoing, Supplier has to compensate Buyer for the damage caused by the delayed delivery.
- 4.8 If, in case of default, a reasonable Grace Period set by Buyer is not observed, Buyer is entitled to order the delayed Goods in the name of Supplier and on Supplier's risk or to commission third parties. Supplier bears all costs and disbursements arising in connection therewith. Besides, Buyer is entitled to terminate the Purchase Order.
- 4.9 In case of emergency, particularly in order to avert acute hazards or to avoid significant damage, Buyer may act without prior notification in accordance with 4.8.
- 4.10 Furthermore, Buyer is entitled to set-off a contractual penalty per each commenced calendar day of the default in the amount of 1%, up to a maximum of 10%, of the entire order value. In the event that certain documents determined in the Scope of Work have to be delivered at determined dates, Buyer is entitled to set-off a contractual penalty in the amount of EUR 500.00 per each document which is in default, as of the second week EUR 1000.00. The contractual penalty shall count towards claims for damages.
- 4.11 The Supplier is not permitted to poach or hire an employee of BWT Aktiengesellschaft or from a Subsidiary without prior written consent of the Buyer. Any violation is subject to a penalty of 100 000.-- EUR which will be set-off against invoices.

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## 5. Nondisclosure

5.1 All information made accessible by Buyer (including characteristics which can be derived from delivered objects, documents, drawings or software, as well as other knowledge or experience) must be kept confidential vis-à-vis third parties, for as long, and to the extent, as they are not provably publicly known. They remain Buyer's exclusive property and shall only be made available within Supplier's business to such persons who must necessarily be consulted for the purpose of delivery to Buyer and who also have been obligated to confidentiality. Without Buyer's prior consent in writing, such information must not be reproduced or used commercially - except for deliveries to Buyer itself. Upon request by Buyer, Supplier must immediately and completely return to Buyer or destroy all information originating from Buyer (including copies and records) and objects lent, together with a corresponding declaration in writing.

5.2 Buyer reserves all rights in such information (including copyrights and the right to file applications for industrial property rights). Insofar as Buyer has received such information from third parties, this reservation also applies to the benefit of these third parties.

5.3 Products which have been manufactured in accordance with documents designed by Buyer, such as drawings, models or suchlike, or which have been manufactured in accordance with Buyer's confidential information or with the tools of Buyer or with emulated tools, may not be used by Supplier, nor offered or delivered to third parties. The foregoing applies on a mutatis mutandis basis to print jobs.

## 6. Inventions, industrial property rights

6.1 Supplier, already herewith, grants to Buyer a gratuitous, transferable, non exclusive and time unlimited right to use inventions made within the framework of the legal relations between Supplier and Buyer which are capable of being protected, in particular in case of development services. Supplier ensures organizationally that it can comply with its obligation to perform and to transfer the right.

6.2 Supplier is aware that the Buyer's Goods are used globally. Supplier guarantees that all deliveries are free of industrial property rights of third parties and, in particular, the delivery and use of the delivery objects does not violate patents, licenses or other industrial property rights of third parties. Supplier will indemnify and protect Buyer from damage and legal actions for all claims asserted on the basis of this stipulation (including attorneys' fees and court costs). Buyer is entitled to obtain the approval for the use of the concerned delivery objects and performances from owner of the right at the expense of Supplier.

6.3 Supplier grants to Buyer the irrevocable right to dispose of the Scope of Work, particularly to resell it to third parties.

6.4 The contracting parties shall inform each other immediately of emerging risks of violation or presumed instances of violations becoming known.

6.5 Buyer has the right to use software, including the documentation thereof, with the agreed performance features in accordance with a contractually agreed use of the Goods. Buyer may produce a backup copy without express agreement.

## 7. Packing, delivery note, invoice, origin of goods, export declaration, and export restrictions

7.1 The Goods must be packed in a way suitable for transportation. Supplier is solely responsible for the accuracy and completeness of the accompanying documents. Particularly in case of hazardous materials, Supplier is responsible for compliance of the packing as well as of the identification marking thereof, as well as of the

means of transportation and of the identification marking thereof, with applicable provisions for the particular means of transport (road, rail, inland and offshore shipping, or aviation respectively). Special regulations concerning identification marking or conservation, or both as stated in the Purchase Order must be complied with.

7.2 Supplier shall issue to Buyer a delivery note and a separate invoice for each shipment. These must contain Supplier number, date and number of the Purchase Order, amount and item numbers of Buyer and Supplier, number and date of the delivery note, gross weights and net weights, stated separately, additional particulars stated by Buyer in the Purchase Order (e.g. unloading point, project number), as well as the agreed units of price or amount, or both. A packing list with a precise index of contents stating the order number must be attached to each delivery.

7.3 If the invoice refers to several Purchase Orders the information provided under section 7.2 must be stated separately for each Purchase Order.

7.4 A supplier with domicile in the EU must document vis-à-vis Buyer free of charge with the delivery the customs tariff number and, upon request, document the Goods by certificates of origin. In addition, Supplier must always mark Goods which do not have their origin from the EU clearly on the delivery note with "goods not originating from EU". A Supplier not being domiciled in the EU must additionally notify Buyer free of charge with the delivery of the customs tariff number and the preferential origin declaration for the respective Goods and, upon request, must attach a certificate of origin. Supplier indemnifies Buyer from all costs arising as a consequence of incorrect, incomplete or inaccurate origin information or origin documents. In case of extra- community Purchase Orders (not within the EU, NAFTA, Mercosur etc.), Supplier must attach an export declaration.

7.5 Supplier is obligated to inform Buyer clearly in offers, prior to entering into Purchase Orders and in invoices concerning possible export restrictions. This particularly includes the identification marking in accordance with concerned national export laws in each case, in particular the export laws of Germany, the United States of America, and Japan, the statement of the concerned export list numbers, and - to the extent that Goods are concerned which are subject to U.S.- American export law - the statement of the American Export Control Classification Number (ECCN).

## 8. Force majeure, transfer of risk

8.1 Force majeure, labor disputes, strikes, non-attributable disruptions of operations, civil unrest, measures of public authorities, or other inevitable events release Buyer for the duration of the events from its obligations. Furthermore, Buyer is entitled - irrespective of Buyer's other rights - to withdraw from the contract in part or as a whole to the extent as the events cause a significant decrease of Buyer's demand and as the events are not of negligible duration.

8.2 Supplier bears the risk until acceptance by Buyer or Buyer's authorized agent at the place where the Goods must be delivered in accordance with the order (Place of Delivery). If Supplier has assumed assembly, installation or placing into operation, Supplier shall bear the risk until acceptance by Buyer or Buyer's authorized agent. If, in addition to the Place of Delivery, a place of final use is identified in the Purchase Order, the bearing of risk extends to the place of final use.

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## 9. Warranty, liability

- 9.1 The statutory provisions concerning defects as to quality and defects in title (hereinafter referred to as Defect as to Quality) apply, unless otherwise provided for in the terms following hereinafter.
- 9.2 A Defect as to Quality is given if the agreed Scope of Work differs from the delivered Scope of Work.
- 9.3 The receipt of the Goods is subject to the reservation of inspection regarding absence of Defects as to Quality, in particular with regard to accuracy, completeness and suitability. Buyer is entitled to examine the Goods to the extent and as soon as this is appropriate within proper course of business. Buyer objects to identified Defects as to Quality without undue delay. In this regard Supplier waives the defense of a delayed Notice of Defect as to Quality. Decisive for numbers of pieces, weights and measures are, with the reservation of proof otherwise, the figures determined by Buyer in the context of the inspection of incoming goods.
- 9.4 If a Defect as to Quality is existent, Supplier has to remedy this. Buyer may determine in its discretion whether to remedy by way of rectification or by subsequent delivery. In case of a subsequent delivery, the Goods must be delivered again.
- 9.5 Buyer' claim to remedy expires after 24 months following acceptance free of defects at the end customer, however at the latest after 36 months following acceptance of the delivery by Buyer, provided that no agreement otherwise has been reached in writing. Buyer's claims are sufficiently maintained if the Defect as to Quality has been notified within the above mentioned period.
- 9.6 If a Defect as to Quality appears within the period stipulated in section 9.5 sentence 1 after the transfer of risk, it is presumed that the Defect as to Quality already existed at the time of transfer of risk, unless this is inconsistent with the nature of the matter or the Defect as to Quality.
- 9.7 If a rectification must be performed, Buyer must set a reasonable time limit for Supplier during which the rectification must be carried out. If Supplier did not remedy a notified Defect as to Quality within the time limit set, Buyer may perform the remedy in the name of, and for the risk of, Supplier in person or by commissioning third parties. Besides, Buyer is entitled to terminate the contract.
- 9.8 In case of emergency, particularly in order to avert acute hazards or to avoid significant damage, Buyer may act without prior notification in accordance with section 9.7.
- 9.9 The time limit pursuant to section 9.5 sentence 1 is suspended for the duration of a rectification or subsequent delivery until Supplier has fulfilled the claims for subsequent performance completely. With regard to all rectified or subsequently delivered Goods, or both, the time limit pursuant to section 9.5 sentence 1 recommences anew.
- 9.10 Supplier must provide compensation for any violation of an obligation and the damage arising thereof. Besides, Buyer may also reduce the purchase price or withdraw from the contract. Further claims remain unaffected; in particular Supplier must bear all costs and disbursements incurred in connection with 9.1-9.8 due to deficient delivery of the Goods, particularly transportation costs, travel costs, labor costs, material costs, or costs of a quality control exceeding the usual scope; also costs that Buyer must reimburse vis-à-vis Buyer's customers.
- 9.11 If Buyer takes back products manufactured, or sold by it, or both, due to defectiveness of the Goods delivered by Supplier, or if the purchase price has been reduced vis-à-vis Buyer for this reason, or if claims have been asserted otherwise vis-à-vis Buyer for this reason, Buyer reserves the right to take recourse vis-à-vis Supplier.

- 9.12 For as long as a Defect as to Quality is existent, Buyer may withhold the payment.
- 9.13 In case of defects in title, Supplier indemnifies Buyer and Buyer's customers from claims of third parties. A statute of limitation of 10 years applies to defects in title.
- 9.14 With regard to Goods which have been inseparably affixed to land (immovable objects), Buyer's claim for remedy of a Defect as to Quality shall expire, contrary to the stipulations of section 9.5 sentence 1, not until after 60 months following the acceptance free of defects at the end-customer, provided that no further reaching agreement has been made. All other stipulations shall remain in effect.

## 10. Other liability

- 10.1 Supplier shall hold Buyer harmless from all claims of product liability, insofar as damages are directly due to defect of the Goods supplied by Supplier. In case of liability based on fault, Supplier shall indemnify Buyer only if the default is solely attributable to Supplier. If the cause of damage is located in Supplier's sphere of responsibility, Supplier bears the burden of proof in this respect. In such cases, Supplier assumes all costs and disbursements, including possible attorneys' fees and court costs or costs of possible product recalls.
- 10.2 Supplier undertakes to enter into a business and product liability insurance including pecuniary losses owing to products and costs of product recalls. The insurance must at least have a rating in accordance with the following rating agencies (A.M.Best: A/A-, Fitch: AA, Moody's: Aa, Standard & Poor's: AA). The limit of indemnity must, in each case, at least amount to EUR 10 million for personal injuries and material damages, as well as for the field of pecuniary losses owing to products and product recalls. Upon request of Buyer, Supplier must present the certificate of insurance.

## 11. Assignment of claims

- 11.1 Without prior consent in writing which shall not be unreasonably withheld, Supplier may not assign or offset its claims vis-a-vis Buyer, or have them collected by third parties.
- 11.2 Buyer may, in connection with counterclaim, retain payments or declare an offset of claims.
- 11.3 This applies to all counterclaims of affiliated companies within Buyer's corporate group of companies.

## 12. Property, provision of tools

- 12.1 A retention of title of Supplier requires an express separate agreement in order to be effective.
- 12.2 Materials and tools provided by Buyer remain property of Buyer and may only be used in accordance with their purpose. The processing of materials and the assembly of parts are carried out on behalf of Buyer. Buyer is joined owner of the products manufactured by use of Buyer's materials in proportion of the value of Buyer's provisions vis-à-vis the value of the whole product; Supplier insofar keeping the products on behalf of Buyer.
- 12.3 Upon request, Supplier must clearly visibly mark provided tools as property of Buyer. Besides, Supplier is obliged to use the provided tools exclusively for the production of the ordered Goods. Supplier must insure the tools provided by Buyer against fire losses, water damages and theft for the original purchase price and at its own expense. Supplier is obliged to carry out possibly necessary maintenance and inspection works in good time at its own expense. Supplier must immediately notify Buyer of possible incidents.
- 12.4 Upon request, Supplier must return provided material, or tools, or both, to Buyer immediately. A right of retention is excluded.

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## 13. Quality and documentation, audit

- 13.1 For its delivery, Supplier must comply with the state-of-science of the country of Buyer as well as of the country of the place of final use named in the Purchase Order, and with the safety regulations and with agreed technical data. Supplier must establish and demonstrate an appropriate quality management.
- 13.2 Supplier is obliged to deliver a CE declaration of conformity including the relevant documentation together with the first delivery.
- 13.3 Supplier must record in its quality recordings for all Goods when, in which manner, and by whom the manufacture thereof free of defects has been ensured. Supplier must keep these records for 15 years and must present them to Buyer upon request. Supplier must obligate his pre-suppliers to the same degree.

## 14. Safety, environmental protection, social standards and human rights

- 14.1 Persons performing works in fulfillment of the Purchase Order at factory premises of Buyer or third parties shall adhere to the respective company rules. The liability for accidents occurring to these persons on the factory premises is excluded, unless these accidents have been caused by deliberate or grossly negligent breach of duty by the legal representatives or vicarious agents in each case.
- 14.2 The Supplier is obliged to comply with the European directives (2012/19/EU) - WEEE (Waste Electrical and Electronic Equipment) regulating the marketing, return, and disposal of electrical and electronic equipment, (2006/66/EG) - Battery Directive regulating the registration and reporting obligations for batteries that are placed on the market and (2004/12/EG) - Packaging Directive regulating the handling of packaging placed on the market.
- 14.3 Supplier confirms within the context of its entrepreneurial responsibility that social minimum standards are complied with while manufacturing the ordered Goods. Moreover, Supplier undertakes that the principles of standard SA 8000 (Standard for Social Accountability) are observed; particularly with respect to the prohibition of child labor, discrimination of whatsoever kind and humane working conditions.
- 14.4 The Supplier undertakes not to employ any illegal workers. The Supplier shall make arrangements for the engagements of all staff and shall be responsible for all valid visa and working permits. Supplier shall hold harmless and protect Buyer from any damage and legal actions for all claims asserted on the basis of this stipulation (including attorneys' fees and court costs).
- 14.5 Supplier undertakes to comply with all local environmental provisions in the manufacturing of the Scope of Work; upon request, Supplier provides appropriate evidence in this respect.
- 14.6 Supplier is prohibited from offering presents or other benefits. Any attempt of an act of corruption leads to immediate abandonment of the business relationship.
- 14.7 Any case of a violation of no 14.3 to 14.6 entitles Buyer to withdraw from the contract.

## 15. Final provisions

- 15.1 Any declaration has to be made in writing. Deviations from this rule require prior agreement in writing.
- 15.2 Supplier shall at Buyer's request set up a consignment stock as required. In this event, the parties shall agree on a separate contract.
- 15.3 Buyer, for all legal disputes arising indirectly or directly from contractual relationships, is entitled to bring, at Buyer's choice, legal actions against Supplier at Supplier's domicile, or at Buyer's domicile, or at the place of performance.
- 15.4 The contractual relationships shall be governed by the law of Buyer's domicile under exclusion of the conflict of laws provisions as well as of the United Nations Convention on Contracts for the International Sale of Goods [CISG].
- 15.5 Buyer is entitled to withdraw from the non-fulfilled part of the contract if an insolvency proceeding concerning Supplier or judicial or extra-judicial settlement proceedings concerning Supplier's assets is filed for.
- 15.6 In the event that any of the provisions of these General Terms and Conditions for Purchase Orders or further agreements entered into is, or becomes, invalid, the validity of the remaining provisions or portions of these General Terms and Conditions for Purchase Orders remain unaffected. The contractual partners are obliged to replace the invalid provision by a provision which reflects as close as possible