

## **General Purchase Conditions of BROSA GmbH**

### **1. Scope:**

#### **Sales and work performance contracts on movables**

- 1.1 These Purchase Conditions shall apply to the purchase or order of movables or goods which BROSA GmbH orders from its vendors if the vendor is an entrepreneur (Section 14 BGB (German Civil Code)), a legal entity under public law or a public-law special fund. BROSA GmbH shall hereinafter be referred to as "BROSA" and the vendors hereinafter as "Supplier".
- 1.2 These Purchase Conditions shall apply regardless of whether the goods were manufactured by the Supplier himself or purchased from suppliers, meaning irrespective of whether BROSA's order is considered a sales contract (Section 433 BGB) or a work performance contract (Section 651 BGB). These Purchase Conditions shall not apply to contracts for work (Section 631 BGB).
- 1.3 Individual agreements made with the Supplier in a particular case (including ancillary agreements, additions and amendments) shall take precedence over these General Purchase Conditions in any event.
- 1.4 References to the application of statutory provisions are for the purpose of clarification only. The statutory provisions shall therefore also apply without such clarification unless they are directly amended or explicitly excluded in these Purchase Conditions, or individual contractual agreements take precedence.

### **2. Non-applicability of the Supplier's Delivery Conditions or Sales Conditions:**

- 2.1 Unless individual agreements made with the Customer take precedence, these Purchase Conditions shall exclusively apply for orders by BROSA.
- 2.2 Divergent, conflicting or supplementary Sales Conditions or Delivery Conditions or any other General Terms and Conditions of the Supplier shall only become part of the contract if and to the extent to which BROSA has explicitly agreed to their applicability in writing. This requirement of explicit written consent shall apply in any case; also, for example, if BROSA unconditionally accepts the delivery while being aware of the Supplier's Sales Conditions, Delivery Conditions or General Terms and Conditions.

### 3. Offer/Orders:

- 3.1. The Supplier shall prepare the offers free of charge.
- 3.2 The Supplier shall confirm the order placed by BROSA within three work days. The order confirmation absolutely must contain BROSA's order, item and position number.

### 4. Supplier's concerns and obligations to notify, Procurement risk, Use of subcontractors:

- 4.1 If the Supplier has concerns regarding the suitability of an item or object ordered by BROSA for the intended use evident to the Supplier, the Supplier shall notify BROSA of these concerns without delay.

Additional rights of BROSA shall remain unaffected also upon notification.

- 4.2 The Supplier shall point out obvious errors (e.g. spelling mistakes or calculation errors) and any incompleteness of the order including the order documents for the purpose of correction or completion before accepting BROSA's order.
- 4.3 The Supplier shall bear the **procurement risk** for his services unless agreed otherwise in a particular case (e.g. sale of goods in stock).
- 4.4 The Supplier shall be prohibited from forwarding orders to subsuppliers or subcontractors without BROSA's written consent.

### 5. Delivery time, Delivery note, Risk assumption:

- 5.1 The delivery time specified by BROSA in the order shall be binding. The Supplier is obliged to notify BROSA without delay and in writing if he cannot comply with the agreed delivery date. Additional rights BROSA is entitled to if the Supplier fails to meet an agreed delivery date shall remain unaffected.

The Supplier shall only deliver the quantities ordered. Any additional quantities delivered can be returned by BROSA at the cost of the Supplier without prior notification and with a corresponding reduction of the invoice. In any event, BROSA shall not be obliged to pay the respective amount until the agreed delivery time.

- 5.2 A delivery note specifying BROSA's order, item and position number shall be enclosed in the delivery. If the delivery note is missing or incomplete, BROSA shall not be responsible for any resulting delays in processing and payment.
- 5.3 The risk of accidental loss and accidental deterioration of the item shall pass to us with the transfer at the place of fulfillment.
- 5.4 If the Supplier is in default, we are entitled to claim a contractual penalty of 0.25 % per calendar day, but only up to a total of 5 % of the net price of the goods delivered late. We are entitled to claim the contractual penalty in addition to fulfillment and as a minimum amount of damages owed by the Supplier in accordance with the statutory provisions; the right to claim any remaining additional damages taking the contractual penalty into account shall remain unaffected. If we accept the late delivery, we shall claim the contractual penalty at the latest with the final payment. Individual agreements shall take precedence over this provision.

## **6. Prices, Packaging material, Discount:**

- 6.1 Unless otherwise agreed in a particular case, the price shall comprise all services and ancillary services of the Supplier as well as all incidental costs (e.g. proper packaging, transport costs including possible transport and liability insurance).
- 6.2 The Supplier shall take back the packaging material upon BROSA's request.
- 6.3 The agreed price shall be due for payment within 30 calendar days as of complete delivery and service – including acceptance if agreed on – and receipt of a proper invoice. If we effect payment within 14 calendar days as of the due date, the Supplier shall grant us a 3% discount on the net amount of the invoice. In case of a bank transfer, payment shall be deemed on time if our bank receives our transfer order before expiry of the payment period; we shall not be responsible for delays caused by the banks involved in the payment process.

## **7. Set-off, Rights of retention:**

- 7.1 BROSA shall be entitled to set-off rights and rights of retention as well as to the right to plead non-fulfillment of the contract to the extent provided by law. BROSA shall particularly have the right to retain due payments as long as BROSA is entitled to claims against the Supplier arising from incomplete or defective performance.

- 7.2 The Supplier shall have a set-off right or right of retention arising from legally binding or undisputed counterclaims only.

## **8. Confidentiality and Retention of title:**

- 8.1 BROSA shall retain the title and copyrights to illustrations, plans, drawings, calculations, executive instructions, product descriptions and any other documents. Such documents shall be used exclusively for the contractual service and shall be returned to BROSA upon completion of the contract. The documents shall be kept secret from third parties including for the time after termination of the contract. The confidentiality obligation shall expire only if and to the extent that the knowledge contained in the documents provided has become publicly known.
- 8.2 The title to the goods shall be transferred to BROSA unconditionally and regardless of payment of the price. If we accept an offer for the transfer of title by the Supplier based on payment of the purchase price, the Supplier's retention of title shall lapse at the latest with payment of the purchase price for the delivered goods. In the ordinary course of business, we shall also remain entitled to sell the goods before payment of the purchase price under advance assignment of the claims arising from the sale. This shall exclude in any event any other forms of retention of title, particularly any retention of title that has been expanded, forwarded and extended to further processing.

## **9. Defective delivery:**

- 9.1 The statutory provisions shall apply for the rights regarding material defects or defects in title of the goods.
- 9.2 Notwithstanding Section 442 (1) Sentence 2 BGB, BROSA shall also be entitled without restrictions to defect claims if we remained unaware of the defect at the time of contract conclusion due to gross negligence.
- 9.3 The statutory provisions shall apply to the commercial obligation to inspect for and give notice of defects (Sections 377, 381 HGB (German Commercial Code)) subject to the following condition: BROSA's obligation to inspect for defects shall be limited to defects that become apparent during incoming goods inspection by BROSA upon external examination. If acceptance is agreed on, inspection shall not be required. Beyond that, it shall depend on the extent to which an inspection is feasible taking into account the circumstances of a particular case in the proper course of business.

- 9.4 If the Supplier is obliged to provide subsequent performance, this obligation shall also comprise the costs of removal and installation of the defective goods.
- 9.5 BROSA shall have the right to claim subsequent performance at its discretion either by removing the defect (rectification) or by providing goods free from defects (replacement).
- 9.6 Should the Supplier fail to fulfil his obligation of subsequent performance within a reasonable deadline set by BROSA, BROSA shall have the right to rectify the defect itself and claim reimbursement of the required expenses or a corresponding advance payment from the Supplier. If subsequent performance by the Supplier has failed or is unreasonable for BROSA (e.g. due to particular urgency, a threat to the operating safety or an imminent occurrence of disproportionate damage), there shall be no need to set a deadline; BROSA shall notify the Supplier of such circumstances without delay – if possible in advance.
- 9.7 Beyond that, BROSA shall have the right to reduce the purchase price or withdraw from the contract in case of material defects or defects in title in accordance with the statutory provisions. Furthermore, BROSA shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## **10. Supplier recourse:**

- 10.1 Apart from defect claims, BROSA shall be entitled without restrictions to the statutory recourse claims within a supply chain (supplier recourse in accordance with Sections 478, 479 BGB). BROSA shall be entitled in particular to demand precisely the kind of subsequent performance (rectification or replacement) from the Supplier as BROSA owes its customer in a particular case. This shall not limit BROSA's statutory right to choose (Section 439 (1) BGB).
- 10.2 BROSA's claims arising from supplier recourse shall also apply if the goods have been further processed by BROSA or a customer of BROSA, e.g. by way of incorporation into another product, before their sale to a consumer.

## **11. Producer liability/Obligation to take out product liability insurance:**

- 11.1 If the Supplier is responsible for any damage to a product, he shall indemnify BROSA from any third-party claims to the extent that the cause lies within his sphere of control and organisation and he himself is liable in relation to third parties.

- 11.2 Within his obligation to indemnify, the Supplier shall reimburse BROSA for any expenses in accordance with Section 683, 670 BGB which arise from or in connection with any claims made by third parties including the recall carried out by BROSA. BROSA shall notify the Supplier of the content and scope of the recall measures – to the extent possible and reasonable – and allow him the opportunity to comment. Additional statutory claims shall remain unaffected.
- 11.3 The Supplier shall take out product liability insurance with a coverage customary in the industry. BROSA's claims, however, shall not be limited to the coverage. The Supplier shall provide a certificate of insurance upon BROSA's request.

## **12. Industrial property rights:**

- 12.1 The Supplier shall warrant to BROSA that no third-party rights are infringed in connection with his delivery or service.
- 12.2 In the event that any third-party claim is brought forward against BROSA due to an infringement of property rights, the Supplier shall be obliged to indemnify BROSA from such claims upon first written request.
- 12.3 The Supplier's obligation to indemnify shall apply to any expenses which BROSA necessarily incurs from or in connection with third-party claims, especially also any legal defence and administrative costs as well as all costs of obtaining the necessary replacements.
- 12.4 If the sale and/or use of the delivery item to BROSA or by BROSA becomes prohibited, the Supplier shall, at BROSA's discretion and at his cost, either obtain the right of use or modify the delivery item in consultation with BROSA in a way that does not affect the infringed property right.
- 12.5 The limitation period shall be 10 years for the claims mentioned above calculated from the time of transfer of the item or – insofar as acceptance is agreed – from the time of the acceptance of the service.

## **13. Materials, items and tools provided by BROSA:**

- 13.1 The title to materials, items and tools possibly provided by BROSA to the Supplier shall remain with BROSA and may only be used for orders by BROSA. The Supplier shall

separately store, label and manage the possibly provided materials, items and tools free of charge. The Supplier shall be liable without restrictions for damages towards BROSA if the provided materials, items or tools are damaged, meaning in case of negligence and intent.

13.2 The Supplier shall be prohibited from replacing the materials, items or tools provided by BROSA with others and using those to fulfil the order.

#### **14. Limitation period:**

14.1 The reciprocal claims of the parties to the contract shall be time-barred only as stipulated the statutory provision unless otherwise agreed above or below.

14.2 Notwithstanding Section 438 (1) No. 3 BGB, the general limitation period for defect claims shall be three years as of the passing of risk.

14.3 The limitation periods stipulated by sales law including the above extension shall apply – to the statutory extent – for all contractual defect claims. Insofar as BROSA is entitled to non-contractual claims due to a defect, the regular statutory limitation (Section 195, 199 BGB) shall apply unless the application of limitation periods stipulated by sales law leads to a longer limitation period.

#### **15. Choice of law / Place of jurisdiction:**

15.1 These Purchase Conditions and all legal relations between BROSA and the Supplier shall be governed by the law of the Federal Republic of Germany with the exclusion of uniform international law, particularly the UN Sales Convention.

15.2 If the Supplier is a merchant according to the German Commercial Code (HGB), a legal entity under public law or a public-law special fund, BROSA's registered office in 88069 Tettwang shall be the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship; however, BROSA shall also have the right to take legal action at the Supplier's general place of jurisdiction. Any divergent mandatory places of jurisdiction which neither BROSA nor the Supplier can influence by means of the above provisions shall take precedence over the above provisions regarding the place of jurisdiction.

### **Environmental regulations**

In general, the Supplier shall only use manufacturing processes and products that do not harm the environment.

We expect that our Suppliers fully support the legislation and customer interest regarding the impact on humans and the environment.

Environmental consciousness should be a matter of course for every Supplier.

We shall have the right to perform an environmental audit of our Suppliers if we deem it necessary.

Upon our company's request, safety data sheets shall be prepared for all materials, equipment and purchased parts. As regards purchased parts, particular care shall be taken to inform us separately of any declarable substances (see VDA (German Automotive Industry Association) list).

### **Occupational safety and environmental protection**

The facilities (production facilities, machines) must be built in a way that complies with the applicable laws and directives of the Federal Republic of Germany. The applicable statutory ordinances shall be observed, as well, as a matter of course.

The Supplier shall take absolute care that the following laws and ordinances for environmental protection and occupational safety are observed.

- Equipment and Product Safety Act (GPSG) and its applicable statutory ordinances – particularly the CE label, declarations of conformity and operating instructions required by the statutory ordinances.
- The ordinances on occupational safety, ordinances on accident prevention as well as the recognised occupational health rules and safety-related, generally recognised rules.
- The Chemicals Act (ChemG), particularly the Ordinance on Hazardous Substances (GefStoffV) and the applicable statutory ordinances.
- The Federal Immission Control Act (BImSchG) as well as the Closed Substance Cycle and Waste Management Act (KrW-AbfG) and the applicable statutory ordinances.



Furthermore, all current ordinances and laws on dangerous goods and water protection must be observed.

Any agreements to the contrary shall require the written form.

### **Responsibility and monitoring for environmental protection**

The Supplier shall make enquiries of the competent environmental officer about the site-specific provisions or shall communicate the competent employee at his company to the environmental officer respectively. Furthermore, the Supplier shall be responsible for environmental protection. The Supplier shall be obliged to review and monitor all objectives of environmental protection. Corrective action shall be taken without delay in situations that prove inadequate. Should the necessary measures for environmental protection be impossible to fulfil or can be fulfilled only under difficult conditions, the customer shall be informed of this immediately, as this impedes fulfillment of the contractual provisions.

Environmental damage must be reported!

The environmental officer shall be informed of any environmental damage caused by the Supplier without delay.

The environmental protection agency must be informed.

The customer shall have the right to reply to inquiries by environmental protection agencies regarding the protection of the environment within the supplier's execution of the job, to grant access to the files and documents and to disclose environmentally relevant data.

### **Environmentally hazardous substances and waste**

In consultation with the environmental officer

- the possibilities of avoiding or processing waste shall be given priority.
- waste shall be disposed of in compliance with the Waste Management Act and the respective statutory ordinances and other provisions,
- non-avoidable use of environmentally hazardous substances shall be monitored. The environmental officer shall be notified of all environmentally hazardous substances.

In order to avoid permanent contamination of water and the characteristics of soil and air, the respective facilities that produce, process, etc. and transport environmentally hazardous substances shall be built in a way that prevents potential environmental risks.