

# CONDITIONS OF PURCHASE OF THE BALLUFF GMBH DATED 01/2016

# BALLUFF

## 1. Scope

Our orders for deliveries and other services (hereinafter referred to collectively as „services“) will be carried out solely on the basis of the following Conditions of Purchase. We shall not acknowledge conflicting or deviating conditions or the Supplier's conditions of sale that are not regulated in these Conditions of Purchase unless we had explicitly agreed in writing that they would apply. This shall also be the case even if (a) we accept the services without reservation despite being aware of conflicting or deviating conditions or conditions that are not defined in our Conditions of Purchase or (b) if in connection with its quotation, its order confirmation, its invoices or in any other context when performing the contract, the Supplier makes reference to general terms and conditions and we do not explicitly object to their incorporation.

Within the framework of ongoing business relationships our Conditions of Purchase shall also apply to all future contracts with the Supplier without our being obliged to draw attention separately each time to the fact that these Conditions of Purchase apply. These Conditions of Purchase shall only apply in business dealings with companies.

## 2. Tools

Tools, processing equipment, models, matrices, templates or other samples (hereinafter referred to collectively as „Tools“), which we make available to the Supplier to carry out an order, will remain our property and are only lent to the Supplier. The Supplier has to maintain the Tools in a serviceable condition at its expense, in particular, it has to look after them appropriately and professionally and service them. Having complied with its contractual obligations, or if no contract materialises or the contractual relationship ends prematurely, the Supplier must hand over the Tools to us in an appropriate condition without delay. Additionally the Supplier must hand over the Tools to us in an appropriate condition without delay at our request at any time.

The Supplier shall bear the risk of accidental loss and of accidental deterioration regarding the Tools in its possession and he must inform us without delay about any damages. Additionally the Supplier is liable for all damages of the Tools due to intentional or negligent breach of duty occurred during the period of its possession.

These conditions shall apply mutatis mutandis to Tools, which the Supplier manufactures or has manufactured to produce the products destined for us and for which we have paid the manufacturing costs.

The Supplier may only use the Tools that fall within the scope of this Section 2 connection with the production of products destined for us. The Supplier undertakes not to cede these Tools to third parties for inspection or other purposes without our prior written consent. The Supplier also undertakes not to cede products manufactured with the help of these Tools either in their unprocessed state or as semi-finished or finished goods to third parties without our prior written consent. The same shall apply to products, which the Supplier has developed to our specifications or with material cooperation on our part (through tests etc.).

## 3. Delivery conditions – Delivery dates – Delay

Unless we have agreed otherwise, delivery shall take place DAP (Incoterms 2010) to the place of delivery specified in our order or, if no place of delivery is cited in our order, DAP to our principal office.

If agreed delivery dates are not complied with, we shall be entitled to demand compensation and to withdraw from the contract once an appropriate grace period expires without the delivery being made, unless the Supplier is not responsible for the delay.

If the Supplier is in default, we shall be entitled to demand a flat rate compensation for damage caused by delay of 0.5% of the value of the services ordered, up to a maximum of 10% of the entire contract value with which the Supplier is in default, for each full week from the date on which the delay started. Both parties are permitted to provide evidence that the damage caused was more or less substantial or that no damage was caused at all.

As soon as the Supplier recognises that it cannot supply the service on time, either entirely or in part, it must notify us without delay of the reasons for and the anticipated duration of the delay in writing. Neither notification nor our silence constitutes approval of a new delivery date or affects our contractual and statutory rights and claims.

Partial deliveries are only permissible with our explicit prior written consent.

Acceptance of partial deliveries or delayed services shall leave our contractual and statutory rights and claims unaffected.

We shall not agree to exemptions of any kind from and to any exclusion, limitation or restriction of the Supplier's liability in the event of a delay in delivery.

## 4. Shipping – Packaging – Costs – Transfer of Risk

The Supplier is obliged to quote our order number clearly on all shipping documents and delivery notes as well as the content of the consignment.

Unless it has been agreed otherwise, delivery is to take place carriage and packaging paid to our principal office or to the other destination specified by us. All shipping and packaging costs are included in the price.

The Supplier is obliged to package and ship the goods correctly. The selection of a suitable carrier is a matter for the Supplier.

Unless agreed otherwise, the Supplier has to collect the shipping packaging for the items to be supplied from our principal office or from the other destination specified by us and dispose of it at its own expense.

We are always to be notified that goods are ready for shipment. We maintain a transit insurance policy. In view of this, the Supplier has to inform us of any damage in transit without delay.

The risk of any accidental destruction or accidental deterioration shall only pass to us when the products are handed over properly. The Supplier has to obtain a written receipt confirming receipt of the delivery from somebody whom we have authorised to provide this.

## 5. Prices – Pricing – Payment

All agreed prices are fixed prices and are, unless agreed otherwise, not subject to any subsequent amendment.

Unless agreed otherwise, the prices are free delivery to the destination including the cost of shipping and packaging and disposal of the packaging.

Unless agreed otherwise, we shall pay invoices within 30 days net. The period shall run from the date on which a proper and comprehensible invoice is received by us, however, no earlier than the date on which the delivery is received.

All payments shall take place conditionally and signify neither acceptance nor acknowledgement that a service fulfils the conditions of the contract.

## 6. Appearance and workmanship – quality standards

All deliveries and services have to feature the best available technology and meet the relevant statutory conditions and provisions as well as guidelines by authorities, employers' liability insurance associations and professional associations and must be suitable for the intended use. In particular, the accident prevention regulations, other industrial safety provisions as well as the generally recognised safety-related and occupational health rules are to be observed. We assume that the responsible persons have the necessary competencies and qualifications for providing the deliveries and services. Incidentally, the customary degree of care is to be exercised in supplying goods and services.

In the case of deliveries or services based on drawings, plans or other specifications or order documentation showing quality characteristics, the specifications and quality characteristics contained therein are to be complied with most precisely. They will rank ahead of any industry norms that would otherwise apply.

The Supplier may only make changes to the execution or quality of the services to be supplied compared with the agreements reached or previous services if samples have been provided in advance and they have been approved by us in writing in advance.

In case of doubt, the Supplier must make enquiries about the intended use or the type of processing.

Partial acceptance or processing of products that have been supplied does not signify that the products have been accepted without complaint. All claims based on defects will remain in force despite partial utilisation or processing of the products supplied.

## 7. Claims based on Defects

In the event that defective products are supplied, we can choose within a reasonable time period to claim for subsequent improvement or for additional delivery. The Supplier shall bear any expenses required for subsequent performance.

The Supplier shall bear especially all cost and expenses incurred in connection with the identification and the removal of the defects - also if they incur at us - especially cost for investigation, disassembly and reassembly, work, material, transport and all other cost for subsequent improvement and subsequent delivery. This shall also apply if the expenses are higher due to the fact that the object of delivery was placed to another place as the place of performance; however this shall not apply if disproportional cost will incur. The kind of supplementary performance chosen by us as well as the supplementary performance itself may not be declined by the supplier on the grounds that disproportional cost will incur provided that the cost of the (chosen) supplementary performance will not exceed the initial price for the product affected more than three times.

In urgent cases (e.g. if the Supplier is in default regarding the elimination of a defect or when we are facing extraordinary damages) we shall be entitled - even if Sales Contract Law is applicable - to eliminate the defects ourselves or to have them eliminated by third parties at the expense and risk of the Supplier. If Sales Contract Law is applicable this does not apply if the Supplier is not responsible for the defect.

If (a) we have given the Supplier an appropriate grace period for subsequent improvement or for additional delivery and this has not been done, (b) subsequent performance has failed, (c) is unreasonable, (d) is refused by the Supplier seriously and finally, or, (e) there are particular circumstances, which, when the interests of both Parties are weighed up, justify the enforcement of the additional rights described below, we shall be entitled to reduce the purchase price by the ratio in which the value of the product in its defect-free state at the time the contract was concluded would have stood to the actual value (decrease) or to withdraw from the contract. In each case, we are entitled additionally or alternatively to claim for damages suffered as a result of defective products being delivered unless the Supplier is not responsible for the breach of duty.

Claims based on defects will be subject to a limitation period of two years from the transfer of risk unless a longer limitation period is provided for by law or we have agreed a longer limitation period with the Supplier.

We shall not agree to a limitation of our statutory claims for damages either with respect to fault criteria or with respect to the scope and the amount of liability.

In addition, the statutory provisions on the supply of defective products apply. The enforcement of further claims resulting from the delivery of defective products by us remains unaffected.

## 8. Duties to Inspect and Complain

The Supplier has to supply the products 100% inspected. Following receipt of the deliveries, we only check whether the goods match the quantity and type ordered and whether there is any transit damage visible on the outside. In this respect, the Supplier waives any additional statutory requirements for incoming goods inspection.

If we identify defects as part of a sampling inspection, we shall have the right at our option either to reject the whole delivery without any further inspection or to perform another inspection by us or by a third party. The Supplier shall bear all costs of the additional inspection.

The period for complaining about defects amounts to 10 working days. The period for making complaints starts when the goods are handed over in the case of obvious defects and when the defect is discovered in the case of defects that are not obvious.

## 9. Quality Assurance

The Supplier has to carry out quality assurance checks involving the best available technology that are appropriate to the type and scope of the order and provide evidence of these if requested to do so. The Supplier is obliged, if we request this, to conclude an appropriate quality assurance agreement based on QS 9000 or any subsequent or supplementary norms.

In addition, the Supplier will endeavour to comply with the requirements of IATF 16949 and ISO 14001 as far as possible.

## 10. Force Majeure

Unforeseen events, over which we have no influence and for which we are not responsible, such as malfunctions, strikes, lock-outs, changes to laws and other cases of force majeure shall exempt us from the obligation to accept the service if the service is no longer utilisable from an economic viewpoint because of these circumstances. In this case, we are entitled to withdraw.

This also applies to unforeseen and unavoidable production changes.

## 11. Provision of Materials and Products – Documentation

Materials or products provided by us will remain our property. They may only be used in accordance with the law. Any joining, processing or mixing of materials or products provided by us shall always take place for us as manufacturer but without any obligation for us. If the (co)ownership lapses as a result of the joining, processing or mixing, it is agreed now that the (co)ownership of the new object will pass to us pro rata according to the ratio of the value of the provisions to the value of the entire product. The Supplier shall store the items subject to our (co)ownership free of charge.

All documentation, plans, illustrations, calculations, drafts, manufacturing regulations, samples, drawings etc. (hereinafter referred to collectively as „Documentation“), which we make available to the Supplier so that it can submit a quotation or carry out a contract, will remain our property. The Supplier may only use the Documentation in the context of fulfilling the contract. Documentation is to be returned to use voluntarily free of charge as soon as it is no longer needed to draw up a quotation and to carry out the contract, including any copies that may have been made. The Supplier undertakes not to cede the Documentation to any third party without our prior written consent and also to keep the content of the Documentation secret from third parties.

## 12. Retention of Title and other Security Interests

We accept our Suppliers' regulations on retention of title only in the form of a simple retention of title (retention of the Supplier's title until payment for the deliveries in question). All forms of retention of title above and beyond this - in particular, the so-called expanded or extended retentions of title as well as Group retentions - and other security interests are excluded.

### 13. Product Liability

The Supplier is obliged to indemnify us against claims under producer and product liability, if the defect causing liability is attributable to a product supplied by the Supplier and it cannot prove that the defect does not result from its manufacturing or organisational area. The claim also encompasses the costs of a possible product recall.

The Supplier has to draw our attention to the risks resulting from its product if it is not used in accordance with the law.

The Supplier is obliged to conclude a third party liability insurance policy for an appropriate amount to cover the above-mentioned risks and to provide us with evidence of this on request. Any additional claims to which we may be entitled shall remain unaffected.

### 14. Third Parties' Property Rights

The Supplier warrants that no third parties' patents or other property rights (such as utility models and registered patents, trademarks and copyrights) are breached in connection with its services. This applies to the place of production and the place of delivery as well as for all countries in which the products of the Supplier or Balluff-products – in which the products of the Supplier are contained or integrated – will be distributed or placed.

If a third party asserts a claim against us on grounds of an infringement of such rights, the Supplier shall save us harmless against such alleged or actual claims unless the Supplier is not responsible for the infringement. In such a case the Supplier has to reimburse us for all damages and the necessary costs and expenses we have incurred through or in connection with the claims made by the third party.

Otherwise the regulations contained in clause 7 of these Conditions of Purchase apply mutatis mutandis to defects of title.

### 15. Limitation/Restriction of Liability

Under the legal provisions and these Conditions of Purchase, the Supplier will be liable – irrespective of the legal ground involved – without restriction. Any restriction of our statutory and contractual claims to compensation for damages (in particular, as a result of the Supplier's liability for delay, defects and the product) is explicitly contradicted both with regard to the negligence criterion and with regard to the extent and amount of liability.

### 16. Conflicting Bans on Retention and Offset – Assignment

If service is defective, we shall be entitled to retain our payments to an appropriate extent, unless something else results from good faith.

Assignment of claims directed towards us will only be effective with our prior written consent.

We do not agree to a restriction of our statutory options of offset and the enforcement of rights of retention.

The Supplier is only entitled to exercise a right for retention if its counterclaims have been confirmed by final court judgement, are uncontested or acknowledged by us. Furthermore the Supplier is entitled to exercise a right of retention only if his counterclaim is based on the same contractual relationship.

### 17. Compliance with Laws

For the duration and in the performance of a contract concluded with us, Supplier ensures to comply with the applicable laws, decrees and other statutory provisions and commercial customs applicable to the business sector of the Supplier, including without limitation with respect to development, manufacture, sale, transport, export and certification of its Products as well as provisions with respect to technical and environmental safety relating to manufacture and processing of technical products, the generally accepted Rules of the Art and all other specifications reflecting the State of the Art at the time of the individual supply. Upon request, the Supplier shall confirm the compliance with the aforementioned laws etc. in writing. The Supplier shall reimburse us for all damages and costs which result of the non-compliance of the aforementioned regulations by the Supplier and shall indemnify us from any third party claims raised against us in connection therewith.

### 18. Export Control and Customs

For goods the commodity code (eg 85340011 or HS-Code or customs tariff number) and the place of origin of the goods must be indicated. For listed goods the national exports list number or the exports list number of the exhibit I to IV of the EC-Dual-Use-Directive and of the US - if the goods are subject to US re-export regulations - must be indicated. Goods which are specially constructed for military purposes must be labeled as „specially de-signed“.The Supplier must provide us unrequested with the referential proofs of origin as well as with the conformity declarations and with the indications of the country of origin resp. destination. The Supplier must provide us with autonomous proofs of origin (Kammerzeugnisse) on demand.

### 19. Place of Performance – Place of Jurisdiction – Applicable Law

Our principal office is the place of performance for all deliveries and services.

Our principal office is the place of jurisdiction. We are, however, entitled to choose to bring an action against the Supplier at its general statutory place of jurisdiction.

German material law will apply to the exclusion of provisions on the conflict of laws and the UN Convention on Contracts for the International Sale of Goods (CISG).

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