

CONDITIONS OF PURCHASE OF BALLUFF GMBH FOR THE AREA OF INDIRECT PURCHASING DATED 10/2020

BALLUFF

1. Scope

- 1.1 These Conditions of Purchase (hereinafter "Conditions of Purchase") shall apply to all types of purchases of products and for the purchase of all types of services by Balluff GmbH (hereinafter "Balluff") in the area of Indirect Purchasing. Unless otherwise indicated from the respective meaning of the following regulations, "Services" in the sense of these Conditions of Purchase shall be products and services of all kinds.
- 1.2 All enquiries, quotations, orders, call-offs and order confirmations from Balluff are based solely on these Conditions of Purchase. Balluff shall not recognise any conflicting, deviating or general terms and conditions issued by the Supplier, which are not specified in the Conditions of Purchase unless Balluff has explicitly consented in writing to their being applicable. This shall also be the case if Balluff accepts the Services without reservation in the knowledge of conflicting, deviating conditions or conditions not specified in the Conditions of Purchase or, if the Supplier refers to his general terms and conditions being applicable in his quotation, in his order confirmation, in invoices or otherwise in connection with the processing of the contract and Balluff does not explicitly object once more to their being included.
- 1.3 In the context of ongoing business relationships, these Conditions of Purchase shall also apply to all future contracts with the Supplier.
- 1.4 These Conditions of Purchase shall only apply in business transactions with companies within the meaning of Section 14 of the German Civil Code (BGB).

2. Quotation – Order – Conclusion of Contract

- 2.1 In his quotations, the Supplier must adhere to the enquiry from Balluff; the Supplier must explicitly indicate to Balluff any deviations to the quotation – especially if the Supplier cannot fulfil the enquiry from Balluff in one or more respects – in writing.
- 2.2 Orders by Balluff shall be placed solely in text form (§ 126b BGB). Preliminary orders notified verbally or by telephone (including by fax, EDI or email) shall be confirmed in writing.
- 2.3 The Supplier must send Balluff a written confirmation of acceptance of the order by return; confirmation must include the date(s) for delivery/service specified by Balluff, price, the service period – if applicable –, and the order number specified by Balluff.

3. Conditions of Delivery – Dates for Delivery/Service – Delay

- 3.1 Unless agreed otherwise, delivery of the products will take place DAP in accordance with the current version of Incoterms – currently Incoterms 2010 – to the place of delivery specified by Balluff in the order or, if the order by Balluff does not specify a place of delivery, DAP registered office of Balluff.
- 3.2 The periods and deadlines specified in the order by Balluff are binding. The delivery date is the date on which the goods are received at Balluff's premises or the delivery address specified by Balluff, the service date is the date of acceptance in the case of work performances or the date on which the Service is supplied in full in the case of Services.
- 3.3 The Supplier is obliged to inform Balluff in writing without delay if circumstances become apparent from which it is clear that agreed deadlines or periods cannot be complied with even if this is not the fault of the Supplier. The Supplier must state the reason and the expected duration of the delay in delivery. The absence of any response by Balluff to this does not constitute acknowledgement of a new deadline or a new period neither does it affect the contractual and statutory claims of Balluff.
- 3.4 Partial deliveries and services are only permitted with the express prior written consent of Balluff.
- 3.5 The acceptance of partial deliveries and partial services or delayed Services does not affect the contractual and statutory rights and claims of Balluff.
- 3.6 Balluff does not accept liability exemptions, liability limitations and/or liability restrictions of any kind of the supplier in the event of a delay in delivery or self-delivery reservations.

4. Transfer to Third Parties

- 4.1 The Supplier must notify Balluff in writing if he intends to transfer the order to third parties or involve subcontractors.
- 4.2 The Supplier is responsible for the fault of his suppliers and subcontractors to the same extent as his own fault; the supplier is responsible for any act or omission of its suppliers and subcontractors as if it were his own acts and omissions.

5. Despatch – Packaging – Transfer of Risk

- 5.1 A delivery note must be attached to each delivery.
- 5.2 The shipping address for Balluff, the order number for Balluff and the order date must be quoted in notifications of despatch, delivery notes, bills of lading and the addresses on any packages.
- 5.3 The Supplier is obliged to pack and despatch products appropriately. In each case, the Supplier must pack and despatch products in such a way that the products will not be damaged. Selection of the suitable carrier is the responsibility of the Supplier.
- 5.4 Transport packaging must be taken back free of charge at any time when requested by Balluff, if Balluff has asked for the delivery to be handed over in its transport packaging. If the transport packaging is not taken back in the course of the delivery or collected within two weeks, Balluff is entitled to return or remove the packaging material at the Supplier's expense.
- 5.5 The risk of accidental destruction and accidental deterioration shall only be transferred to Balluff when the products are duly handed over. The Supplier must obtain written confirmation that the delivery has been received from a person authorised by Balluff.

6. Provision of Services

- 6.1 In the event of services being commissioned, the Supplier shall have systemic responsibility, i.e. he is responsible to Balluff for providing the Services in all processing steps and regarding all parts of the Service, regardless of whether subcontractors were commissioned. The regulations in Section 4 shall also apply.
- 6.2 In the event of services being commissioned, the Supplier must nominate a contact person and – if required – a project manager, who will plan, coordinate and monitor the respective order and be the contact responsible for Balluff. The Supplier's contact person/project manager must inform Balluff at any time – on request – of the status of the service provision. The contact person/project manager may only be replaced for good cause and following prior, written consent from Balluff. The Supplier must change the contact person/project manager at the request of Balluff if there is good cause. The exchange of the contact person/project manager of the Supplier must under no circumstances lead to an increase in the remuneration to be paid by Balluff for the Services and/or that agreed dates change.
- 6.3 The Supplier must take care that his employees and other third parties used by him observe the conditions for visits and the house rules of Balluff (especially the safety information for visitors). Any instructions by the Balluff factory security service must be observed in this respect.
- 6.4 The Supplier will take all necessary measures as part of the provision of the Services – without additional remuneration, even if these were not expressly mentioned in the context of the assignment. In particular, the Supplier must request or obtain the documents needed to carry out the respective services. The Supplier must check these documents for completeness, accuracy and possible discrepancies. The Supplier must notify Balluff in writing of any concerns without delay including details of the reasons for his concerns.
- 6.5 If the Supplier has developed or adapted software as part of the service provision, he must hand over the developed and adapted programs, having carried out a program

test, in testable and machine-readable form on a suitable data carrier together with the source code (for individual software) and documentation to Balluff. The Supplier is obliged to grant Balluff access to the source code and documentation even while the service is being performed.

7. Amendments – Additions

- 7.1 Balluff may, at its discretion and taking account of the Supplier's interests, request amendments and additions to the order at any time. In the case of work performances, this is only possible until acceptance.
- 7.2 This right to request amendments and additions shall apply, in particular, for amendments to Services and supplementary Services, which (a) are technically necessary, (b) are the result of official requirements or (c) are necessary to comply with the deadlines or the budget. The Supplier is obliged to investigate such orders immediately regarding their technical feasibility and their impact on quality, the schedule and costs and must inform Balluff in writing of the results immediately when he has completed his investigation. The Supplier is also obliged to suggest amendments to Balluff, which he considers necessary or advisable with regard to the successful fulfilment of the contract and must also implement these changes following written consent from Balluff.
- 7.3 If an amendment leads to an increase or decrease in the costs/remuneration and/or a change in the dates, the Supplier must notify Balluff of this immediately after receipt of the change request or in his change request and submit a corresponding supplementary offer.
- 7.4 The amendment shall take place on the basis of a written agreement in which payment for the additional costs/remuneration or consideration of the reduction in costs/remuneration and the schedule are specified.
- 7.5 If the fundamentals of the payment for the contractual Services or part of the Supplier's performance are changed as a result of the amendment, the payment must be adjusted by agreement taking account of the increase or reduction in costs.
- 7.6 If Services by the Supplier that were not envisaged in the contract become necessary as a result of an amendment, the Supplier is entitled to additional payment if this was agreed in writing before the additional Service was carried out or authorised by Balluff in writing. The additional payment is determined in accordance with the basics for determining the price of the contractual Service and the particular costs of the additional Service requested.

8. Acceptance

- 8.1 If the Service to be supplied by the Supplier consists of a work performance or work delivery, formal acceptance is required. Once the notification of completion has been received from the Supplier and once all the documentation pertaining to the provision of Service has been handed over, Balluff will carry out the acceptance. If the review of the Service supplied by the Supplier requires putting into operation or putting into use for testing purposes, acceptance will only take place once the tests have been completed successfully.
- 8.2 A formal record of acceptance will be prepared about the acceptance. However, the formal acceptance does not take remedied until the Supplier has remedied any defects that are identified. Defects must be remedied without delay, at the latest within a reasonable period set by Balluff.
- 8.3 Any fiction of acceptance is excluded. The operational handover of the Service does not constitute an acceptance. Payments by Balluff do not mean that Balluff has accepted the Service.
- 8.4 The Supplier is not entitled to any partial acceptance.

9. Prices – Billing

- 9.1 All prices are net fixed prices for the entire contractual execution period excluding value added tax to be calculated separately and are not subject – unless explicitly agreed otherwise – to any retrospective amendments. This also applies to unit prices and lump-sum prices.
- 9.2 Unless agreed otherwise, the price includes freight (delivery DAP in accordance with the current version of Incoterms), transport insurance, packaging and its disposal in compliance with the legal provisions and all ancillary costs (such as transport and installation costs, travel expenses, surcharges, lump sums).
- 9.3 Unless agreed otherwise, Services will be billed at actual costs based on hourly time sheets. Unless agreed otherwise, the Supplier must invoice Services retrospectively each month stating the project name, the order number and the respective proof of performance. Proofs of performance require a written countersignature and confirmation from the contact person for Balluff on site. If additional costs are determined, the Supplier must prepare a written quotation for these costs in advance for Balluff, in which he justifies the additional costs.
- 9.4 By payment of the agreed remuneration to the Supplier, all contractually agreed Services to be supplied by the Supplier including all rights to be transferred or granted are compensated.

10. Invoicing – Payment terms

- 10.1 The invoice must be sent separately. The invoice must be provided with the Balluff order number and the order date; all invoices must comply with the provisions of the German Sales Tax Act (Umsatzsteuergesetz).
- 10.2 Unless agreed otherwise, payment shall take place within 14 days at a 3% discount or within 30 days net. The period shall run from the receipt of a proper, comprehensible invoice by Balluff, however, at the earliest from receipt of the delivery/provision of the Service.
- 10.3 The agreed discount can also be deducted if Balluff offsets or is entitled to withhold payments due to material or legal defects.
- 10.4 In each case, payments by Balluff are made subject to correction or recovery, should the calculation or objections subsequently prove to be incorrect, and subject to the correct receipt of the products. Payments do not mean acceptance of the delivery or service as in accordance with the contract.

11. Incoming Goods Inspection – Complaints – Acceptances

- 11.1 In the context of an incoming goods inspection, Balluff is only obliged to carry out random checks of the products supplied for quantities, identity and obvious defects as well as visible transport damage.
- 11.2 Defects in relation to products that are not obviously within the meaning of Section 11.1, shall be notified to the Supplier without delay once they have been identified during the ordinary course of business.
- 11.3 The Supplier shall waive all other legal requirements (especially in accordance with Section 377 of the German Commercial Code (HGB)) for the incoming goods inspection and obligations to inspect and give notice of defects.
- 11.4 If Balluff identifies defects to products during a random inspection, Balluff is entitled, at Balluff's discretion, to reject the entire delivery without any further investigation or to carry out another investigation or have one carried out. The Supplier shall bear all the costs of the additional investigation.
- 11.5 Payments by Balluff, further call-offs or orders constitute neither approval of defects or short deliveries nor a waiver of warranty claims or other rights resulting from defects.
- 11.6 The Supplier must ensure that the products have been 100% checked before delivery. The Supplier is obliged, in particular, to check products before delivery to determine whether they comply with the specification mentioned in the order and are free from defects.

11.7 If the work is materially defective in the case of the applicability of the German Law on Contracts for Work and Services (Werkvertragsrecht), a claim to payment of a discount is excluded.

11.8 If Balluff is asked by the Supplier to accept work within a certain period and Balluff does not explicitly object within that period, the work will not be deemed to be accepted.

12. Quality Standards – Material Defects – Compensation

12.1 All products and services must comply with the specifications mentioned in the order, the specifications and other information as well as the legal provisions applicable at the date of delivery and service, the rules of safety technology, the relevant regulations and directives as well as national and international standards (such as DIN, CEN or ISO standards) as amended and be suitable for the proposed use.

12.2 The Supplier is obliged to comply with all applicable German and European provisions regarding the transfer, availability and/or affixing of technical or other documentation, operating or other instructions, labels and declarations. He will – if required by law – supply Balluff with properly prepared operating instructions.

12.3 Claims due to material defects become statute-barred within the statutory periods, unless a longer period of limitation has been agreed.

12.4 In urgent cases (if the Supplier is in delayed with the remedy of a defect or if Balluff is at risk of unusually high damage), Balluff – even if the Sales Contract Law (Kaufvertragsrecht) applies – is entitled to remedy defects itself at the expense and risk of the Supplier or have them removed by third parties. In the case of the applicability of the Sales Contract Law (Kaufvertragsrecht), however, this does not apply if the Supplier is not responsible for the defect.

12.5 In these cases and also otherwise in the context of supplementary performance, the Supplier has to reimburse Balluff for the necessary costs and expenses (e.g. transport, travel, labour and material costs, costs for repeated trips, etc.).

12.6 Balluff does not accept any limitation of the statutory claims for defects, as well as the statutory liability and damage claims. In particular, this applies to the level of responsibility, the scope of liability and the amount of liability.

12.7 In addition, the statutory provisions on liability for defects apply. The assertion of further claims by Balluff based on defective deliveries and services in this respect remains unaffected.

13. Product Liability – Indemnity – Third Party Liability Insurance Cover

13.1 The Supplier is obliged to indemnify Balluff against third party claims in the context of product liability insofar as the fault giving rise to the liability can be attributed to a product manufactured or delivered by the Supplier and he does not succeed in proving that he was not caused by him and does not result from his manufacturing or organizational area. The claim also includes the costs of any recall campaign.

13.2 The Supplier must also point out to Balluff the risks that arise from its product in the event of improper use.

13.3 The Supplier agrees to maintain a product liability insurance policy with an appropriate annual sum insured. The Supplier must provide evidence of such a policy without delay if this is requested by Balluff. Any further claims to which Balluff is entitled shall remain unaffected.

14. Rights of Retention and Set-Off – Assignment

14.1 In the event of defective delivery or service, Balluff is entitled to retain payments in an appropriate amount.

14.2 Assignment of claims directed against Balluff is only legally effective with the written consent of Balluff.

14.3 Balluff does not accept any restriction of the legal options for set-off by Balluff and the assertion of rights of retention.

14.4 The Supplier is only entitled to retention and set-off rights if his counterclaims have been legally established, are undisputed, have been recognized by Balluff or are in a close reciprocal relationship to Balluff's claim. In addition, the Supplier is only authorized to exercise a right of retention if his counterclaim is based on the same contractual relationship.

15. Termination

15.1 Possible ordinary rights of termination, especially in relation to contracts for services, are regulated and defined in the respective contract.

15.2 If the provision of Services consists of a work performance, Balluff is entitled to terminate the contract or definable parts thereof at any time.

15.3 If the Supplier is responsible for the reasons for termination, Balluff only must pay for the Services supplied in accordance with the contract to that point, which are self-contained and documented, if they can be used by Balluff. Claims for compensation by Balluff shall remain unaffected.

15.4 If the Supplier is not responsible for the reasons for termination, Balluff shall refund the Supplier for all his expenses demonstrably incurred from and directly associated with the order until the contract was terminated, including the costs resulting from inescapable commitments. The Supplier shall not accrue any claims for fulfillment or compensation above and beyond this when the termination occurs. The rights to protection and/or use of the results of work created up to the termination shall pass to Balluff in accordance with Section 18.

15.5 The right to extraordinary termination for good cause shall remain unaffected.

16. Retention of Title

Balluff does not accept retention of title regulations that go beyond the agreement of a simple retention of title, in particular so-called amplified or extended retention of title or group retentions.

17. Defects of Title

17.1 The Supplier warrants that no third party rights, especially third party property rights are infringed in connection with his deliveries and services. This applies to the place of manufacture, the place of delivery and service as well as to all countries to which the Supplier's products and services or Balluff products in which the Supplier's products and services are included or installed are sold or to which they are shipped.

17.2 If a third party has recourse to Balluff because of such a breach of his rights, the Supplier is obliged to indemnify Balluff against these alleged or actual claims unless the Supplier is responsible for the breach of duty. If a third party has recourse to Balluff because of such a breach of his rights, the Supplier must also reimburse Balluff for all losses as well as the necessary costs and expenses, which Balluff incurred from or in connection with the recourse by the third party, unless the Supplier is not responsible for the breach of duty.

If a third party claims against Balluff because of such an infringement, the Supplier is obliged to release Balluff from these alleged or actual claims, unless the Supplier is not responsible for the breach of duty. If a third party claims against Balluff because of such an infringement, the Supplier must also reimburse Balluff for all damages, as well as the necessary costs and expenses incurred by Balluff or in connection with the claim by the third party, unless, the Supplier is not responsible for the breach of duty.

17.3 In other respects, Balluff's claims due to defects in title are based on Section 12.

18. Commercial Property Rights and Copyrights

18.1 Unless otherwise agreed, all copyright usage rights, industrial property rights and legal

positions similar to property rights arising from the provision of Services and all other written, machine-readable and other work results created within the framework of the provision of Services shall pass without further conditions and without additional payment to Balluff when they arise. They are available to Balluff exclusively without restriction in terms of space, time and content and can be extended, transferred, revised, adapted, amended, reproduced or published by Balluff without the consent of the Supplier.

18.2 If, in the context of provision of his Services, the Supplier develops or amends software, rights of use, commercial property rights and similar legal positions pursuant to Section 18.1 are not limited to the object code but also extend to the source code and the documentation for the programs that have been developed and amended.

18.3 Use of the Services supplied is free of charge for Balluff. Balluff is granted the right to apply for a patent for the results of any development that can be patented.

19. Compliance with Laws

19.1 The Supplier warrants that he will comply with the applicable laws, regulations and other legal provisions and trade practices, which are applicable to the Supplier's corporate sector, especially with regard to the development, manufacture, sale, transport, export, certification of the products and services supplied by him, during the term of and in executing any contract concluded with Balluff. This relates, in particular, to the legal provisions governing the safety-related and environment-related execution and processes of technical products, the generally accepted rules governing engineering and other provisions, which express the state of the art at the time the deliveries and services are provided.

19.2 If requested by Balluff, the Supplier is prepared to provide written confirmation of compliance with the above laws etc.

19.3 The Supplier shall reimburse Balluff for all losses and costs that arise from culpable non-compliance with the above regulations by the Supplier and will indemnify Balluff against possible claims raised against Balluff by third parties in this connection.

20. Data protection

20.1 The Supplier shall ensure that all persons entrusted with the provision of Services shall observe the legal provisions governing data protection, in particular, the General Data Protection Regulation (GDPR), especially when processing personal data. These persons must be obliged, in accordance with data protection legislation, to keep data secret before they start work for the first time and this must be demonstrated to Balluff on request.

20.2 The Supplier shall indemnify Balluff against all claims and demands made by third parties against Balluff because of a breach of the obligations pursuant to Section 20.1 unless the Supplier is not responsible for the breach of duty. In such a case, the Supplier must also reimburse Balluff for all losses and the requisite costs and expenses incurred by Balluff from or in connection with the claim by the third party.

20.3 If the Supplier makes use of a subcontractor in providing the Service, the Supplier must ensure that the subcontractors used by him comply with the legal requirements governing data protection, in particular, the GDPR. The Supplier's obligation to indemnify Balluff pursuant to the above Section 20.2 also extends to these subcontractors.

21. Non-Disclosure – Reference

21.1 "Confidential information" for the purposes of these Conditions of Purchase are all commercial and technical details pertaining to Balluff that are not publicly known and which are made accessible and known to the Supplier through the business relationship and on the basis of these Conditions of Purchase. Explicit designation as confidential makes information "Confidential Information" for the purposes of these Conditions of Purchase without further ado.

21.2 Confidential information is not to be disclosed by the Supplier and only used for the purposes of fulfilling the respective contract. The obligation of non-disclosure extends beyond the term of the respective contract.

21.3 Knowledge and information that are

a. already publicly or generally known or state-of-the-art at the time they are notified to the Supplier,

b. were already known at the time they were disclosed to the Supplier,

c. subsequently become publicly or generally known or state-of-the-art without the Supplier being responsible for this,

d. were disclosed or made accessible to the Supplier by a third party authorised to do so,

e. with regard to which Balluff has agreed in writing to their being passed to, disclosed to or made accessible to third parties, or

f. disclosure of which is requested by the court, are exempted from this non-disclosure obligation.

The burden of proof for the existence of one of the above-mentioned exceptions shall be borne by the Supplier.

21.4 The Supplier shall be liable to Balluff for reimbursement of losses incurred. If it is definite that Confidential Information reached third parties from the sphere of the Supplier or his subcontractors, a culpable (at least negligent) breach of obligations of non-disclosure laid down in this Section 21 will – subject to evidence to the contrary – be assumed.

21.5 The Supplier shall not acquire his own rights of use, processing or reproduction of any kind by disclosing Confidential Information. Balluff shall retain all rights in this respect, especially all rights to register property rights.

21.6 The Supplier may only use his business relationship with Balluff for advertising purposes after obtaining prior, written consent from Balluff.

22. Place of Performance – Place of Jurisdiction – Applicable Law

22.1 Balluff's registered office is the place of performance for all deliveries and services.

22.2 The law of the Federal Republic of Germany shall apply exclusively excluding its provisions on the conflict of laws. Application of the CISG is excluded.

22.3 The Local Court of Stuttgart is agreed as the place of jurisdiction for legal disputes that fall within the competence of local courts, while the Regional Court of Stuttgart is agreed as the place of jurisdiction for legal disputes that fall within the competence of regional courts. Balluff is, however, free to choose to take action at the Supplier's registered office.

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