

## **General Terms and Conditions of Purchase**

bwe Energiesysteme GmbH & Co KG (bwe)

### **I. General - Scope of Validity**

1.

Our terms and conditions of purchase apply exclusively. Any contradictory terms or terms that differ from our terms and conditions issued by our suppliers shall not apply unless expressly confirmed in writing. Our terms and conditions of purchase also apply if we accept a supplier's delivery without reservation in the knowledge that the supplier's terms and conditions contradict or differ from our own.

2.

All agreements between us and the supplier concerning the fulfilment of this contract are to be made in writing.

3.

Our general terms and conditions of purchase only apply to businesses in the sense of §310, paragraph 1 of the BGB (German Civil Code).

4.

Our general terms and conditions of purchase also apply to any and all future transactions with the supplier, even if they are not referenced explicitly.

### **II. Offer - Offer Documents**

1.

The supplier is obliged to accept our order within 2 weeks. Our orders are only binding when they have been submitted by us in writing.

2.

We reserve all rights of ownership and copyright for images, drawings, calculations and other documents. They may not be made accessible to third parties without our express written permission. They are solely to be used for the preparation of our order, and must be returned to us after the order without request. They must be kept confidential from third parties; the regulation under VIII applies additionally.

### **III. Prices - Payment Conditions**

1.

The price shown in the order is binding. Prices include compensation for all supplier services (including necessary certificates of approval, checks and other, drawings, security information sheets, technical information sheets, handbooks, operational instructions in German and English) as well as all additional costs (including transport, insurance, customs and packaging) and are quoted free at the place specified by us. Return of packaging requires a special agreement.

2.

Statutory value-added tax is included in the price.

3.

We can only process invoices if they - in accordance with the requirements set out in our order - include the relevant order number; the supplier is responsible for all consequences relating to the failure to fulfil this obligation, unless he/she can prove that he/she was not responsible.

4.

Unless otherwise agreed in writing, we shall pay the net purchase price within 14 days (calculated by receipt of invoice and delivery) with a 2% discount, or within 30 days after receipt of invoice.

5.  
Our rights to set off and retain payments are reserved to the extent of the law.

#### **IV. Scope of Services**

1.  
The supplier's scope of services is established in the specifications and description of services agreed upon entering into the contract, our order and our terms and conditions of purchase.

2.  
The supplier will ensure that he/she is aware of all data and circumstances required for the fulfilment of his/her contractual duties, as well as our intended use of his/her services/deliveries, in a timely manner. The supplier may only refer to the lack of necessary documents if the documents were requested in good time but not received by the reasonable deadline.

3.  
The supplier shall ensure that his/her deliveries include all services necessary for proper, safe and economic use and that they are suitable for the intended use, and that they reflect the current state of science and technology.

4.  
The supplier must introduce and uphold a suitable, documented quality assurance system, the nature and extent of which are compliant with the current state of the art. He/she is to create records, in particular with regards to quality checks, and to make these available on request.

#### **IV. Delivery Deadline**

1.  
The delivery deadline in the order is binding.

2.  
The supplier is obliged to immediately inform us in writing if any circumstances arise or become known that could prevent the agreed delivery time from being honoured.

3.  
In the case of default of delivery, our statutory claims apply. We are especially permitted to demand damage compensation or withdraw from the contract in place of receiving the service if a set deadline has not been honoured. If we demand damage compensation, the supplier has the right to provide evidence that he/she was not responsible for the breach of obligation.

4.  
Otherwise, the supplier must pay a fixed compensation sum of 0.1% of the delivery value per complete day of default. However, this amount may not exceed 5% of the delivery value.

#### **VI. Transfer of Risk - Documents**

1.  
Unless otherwise agreed in writing, the delivery/service must take place 'DAP' ('delivered at place', INCOTERMS 2010) at the location specified in the order for the delivery/service or use.

2.  
The supplier may subcontract a third party to fulfil the contract's scope of services as long as we have provided written permission in advance.

3.

The supplier is obliged to provide our order number accurately on all delivery paperwork; if he/she fails to do so, we will not be held responsible for related processing delays.

4.

The delivery must include a delivery note with our order number, our order position number, our product numbers, exact product description and the amount. Otherwise, we are permitted to refuse acceptance of the delivery at the supplier's expense.

5.

The supplier is to sufficiently insure the completed delivery products, materials and wares that are ready to be collected against accidental destruction (especially by fire and theft), as well as accidental and culpable deterioration at his/her own expense at least until risk has been transferred to us.

6.

Machines/equipment will not be accepted by us until they have been successfully installed and put into operation. Adherence to machine guidelines relevant at the time of the order, as well as to any other safety requirements relevant to the order, is required for approval. An EC conformity declaration and operation manual must be provided. The provision of a CE label is also a prerequisite for approval.

7.

Raw materials and materials subject to the Ordinance on Hazardous Substances shall only be accepted when all required approval and inspection certificates, as well as safety information sheets for hazardous substances, are provided in accordance with the regulations valid at the time of the order.

8.

We are not obliged to accept partial deliveries, over deliveries or under deliveries if not agreed to in advance. With regards to unit quantities, measurements and weights, the values provided by us during our receipt checks are decisive.

9.

We can refuse to accept the delivery in the case of force majeure or other circumstances outside our control (such as industrial action) that make accepting the delivery impossible or unreasonable. In such a case, the supplier shall store the delivery at his/her cost and risk.

10.

After installation work is complete, the supplier is to create proof of installation to be signed off by us. The supplier is to attach any such proof to the invoice.

## **VII. Investigation of Defects - Defect Liability**

1.

We are obliged to inspect the wares before the passing of a reasonable deadline for qualitative or quantitative deviations and to contest and established deviations; this contesting shall be considered timely as long as the supplier receives the notification within 10 working days of receipt of goods, or from the date of discovery in the case of hidden defects.

2.

We reserve all statutory defect rights without limitation; we are permitted to request that the supplier either provides a replacement product or rectifies the defect at our discretion. The right to damage compensation, especially damage compensation in place of service, is expressly reserved.

3.

The supplier must ensure that his/her delivery/service fulfils the agreed quality and intended use. If we incur costs due to a defective delivery/service, such as transport, work, material costs and/or contractual penalties, the supplier is to cover these costs or reimburse us.

4.

Costs for rectifying a defect or providing a replacement product/service, including all additional costs, are to be paid by the supplier.

5.

We are permitted to rectify the defect at the supplier's expense if the supplier is in default.

6.

The statute of limitations is 36 months, calculated from the transfer of risk. Otherwise, statutory regulations shall apply.

### **VIII. Advertising - Confidentiality**

1.

The supplier is obliged to keep strictly confidential all received images, drawings, calculations and other documents or information. They may not be made accessible to third parties without our express permission. This duty of confidentiality also applies after the contract has ended and shall only expire when the images, drawings, calculations and other information have become general knowledge.

2.

Requests, orders and all related correspondence between us and the supplier may only be used for promotional purposes with our express written permission.

3.

The supplier is obliged to keep confidential from third parties any and all business transactions, facilities, equipment, documents etc regarding us or our clients that he/she may have become aware of while contracted by us, even after the relevant offer is complete or the contract has been fulfilled.

### **IX. Product Liability - Indemnification - Liability Insurance Protection**

1.

Insofar as the supplier is responsible for product damage, he/she is obliged to indemnify us from third party claims for damage compensation, as the cause arose from the supplier's sphere of authority and organisational field and he/she is liable for third parties.

2.

Within the realms of his/her liability for damages in the sense of paragraph 1, the supplier is also obliged to reimburse any expenses in accordance with §683 and 670 of the BGB (German Civil Code) or §830, 840 or 426 of the BGB arising from or relating to recalls carried out by us. We will notify the supplier of the content and scope of the recall - insofar as is possible and reasonable - and give him/her the opportunity to make a statement. Other statutory claims remain unaffected.

3.

The supplier is obliged to maintain a product liability insurance policy with coverage of 10 million euros per personal or property damage - fixed - during the duration of this contract i.e. until the end of the statute of limitations for defects. If we are allocated further claims to damage compensation, these shall remain unaffected.

### **X. Rights of Protection**

1.

The supplier guarantees that no third party rights within Germany are violated by his/her delivery.

2.

If we are faced with a third party claim, the supplier is obliged to indemnify us from this claim at our first written request; we are not permitted to come to any agreement with the third party without the supplier's permission, and especially may not agree to a settlement.

3.

The supplier's obligation to indemnify applies to all necessary expenses incurred by us due to or in relation to the third party claim, insofar as the supplier does not provide evidence that he/she was not responsible for the breach of obligation.

4.

The statute of limitations for this claim is 3 years from the transfer of risk.

### **XI. Retention of Ownership - Provision - Tools**

1.

Insofar as we order parts from the supplier, we reserve ownership hereof. Processing or restructuring is carried out by the supplier for us. If our reserved goods are inextricably combined with other objects that do not belong to us, we shall have joint ownership of the new object proportionate to the value of the reserved goods (purchase price plus VAT) in relation to the other combined objects at the time of their combining. If the combination takes place in such a way that the supplier's object is to be seen as the principle component, it is agreed that the supplier shall transfer proportionate joint ownership to us; the supplier shall guarantee either sole or joint ownership for us.

3.

We reserve ownership of tools; the supplier is further obliged to exclusively use the tools for the creation of products ordered by us. The supplier is obliged to insure the tools belonging to us against fire, water and theft at his/her own expense. The supplier shall transfer all claims for damage compensation from this insurance to us now; we accept this transfer with immediate effect. The supplier is obliged to carry out all necessary maintenance and inspection work on our tools in a timely manner at his/her own expense. Any malfunctions must be reported to us immediately; if the supplier fails to do so culpably, claims for damage compensation remain unaffected.

4.

Insofar as the rights of security outlined in 1 and/or 2 exceed the purchase price of all our as yet unpaid reserved goods by more than 10%, we are obliged to release a right of security of our choice at the supplier's request.

### **XII. Place of Jurisdiction - Place of Fulfilment**

1.

Insofar as the supplier is a business, our registered office shall be the place of jurisdiction. However, we are also permitted to take legal action against the supplier at the court of his/her habitual residence.

2.

Unless otherwise stated in the order, our registered office is the place of fulfilment.