

**General Terms and Conditions of Purchase**

(Edition June 2023)

**1 General**

- 1.1 Our Terms and Conditions of Purchase apply exclusively. We will only recognise opposing or deviating terms and conditions of the Supplier if we have expressly consented to these in writing. Our Terms and Conditions of Purchase will also apply if we accept products or services of the Supplier or pay for them despite being aware of terms and conditions of the Supplier which oppose or deviate from our Terms and Conditions of Purchase.
- 1.2 Our Terms and Conditions of Purchase are the contractual basis for all business relationships with the Supplier concerning goods and/or services, unless otherwise agreed in writing.

**2 Conclusion of the contract, amendments to the contract and basis of the contract**

- 2.1 Contracts, purchase orders and delivery call-offs as well as any amendments and supplements to these must be in writing, whereby the written form will also be deemed to have been complied with under these Terms and Conditions of Purchase if email or fax is used.
- 2.2 Oral agreements require written confirmation to be valid.
- 2.3 Cost estimates are binding and are not subject to remuneration unless otherwise expressly agreed in writing.
- 2.4 The content of the documents communicated by us and relevant for performance of the contract must be checked by the Supplier. The Supplier must inform us without undue delay of any detectable inaccuracies, contradictions or missing content.
- 2.5 Each order must be confirmed by the Supplier in writing without undue delay. In addition to the order confirmation, performance of the order, in particular delivery or partial delivery and the acceptance of payments will be deemed to be unrestricted consent to our Terms and Conditions of Purchase.
- 2.6 If the Supplier does not accept the order within one (1) week after receipt, we will be entitled to revoke the order.
- 2.7 We have a right to change the content of the order if necessary. The Supplier also has a duty to perform the modified order unless this is technically impossible or otherwise unreasonable for the Supplier. If the order modification leads to additional or reduced costs, the originally agreed remuneration must be adjusted accordingly.
- 2.8 A contractual basis of the supply and service relationships is that the Supplier remains competitive in terms of prices, quality, innovative capacity and security of supply.
- 2.9 The Quality Assurance Agreement (QAA) of BRUSA Technology AG, available at our Homepage, is an integral and binding part of the order.

**3 Delivery**

- 3.1 Deviations from contracts, orders and delivery call-offs in terms of type, quality, number of pieces, mass and weight will only be effective with our prior written consent. The values determined by us will be decisive. The Supplier is free to prove that there are no deviations.

- 3.2 Agreed dates and deadlines are binding. The time of receipt of the goods at the place of performance will be decisive for determining compliance with delivery dates or delivery periods. If carriage paid (e.g. DAP or DDP according to Incoterms 2020) has not been agreed, the Supplier must make the goods available to the forwarding agent in good time, taking account of the time for loading and delivery to be agreed with the forwarding agent.
- 3.3 Delivery dates must be complied with punctually. In the event of non-compliance with the delivery date, the Supplier will fall into default without a warning being necessary. If the Supplier recognises difficulties with regard to production, material procurement, adherence to supplier deadlines or similar circumstances which could prevent it from complying with the delivery date or from delivering the agreed quality and quantity, he must immediately notify [info@brusatechnology.com](mailto:info@brusatechnology.com)
- 3.4 If the Supplier does not deliver or provide its service or if it falls into default of delivery, our rights, especially our right to rescind the contract and our right to claim compensation, will be governed by the statutory provisions. The provisions under subsection 3.5. below remain unaffected.
- 3.5 If the Supplier is in default of delivery, in addition to the further-reaching statutory claims, we can claim liquidated damages for default damage in the amount of 1 % of the net price per full working day, but no more than a maximum of 10 % of the net price of the goods delivered late. We reserve the right to prove that the loss suffered is higher. The Supplier is free to prove that no loss was suffered or that the loss suffered was significantly lower.
- 3.6 We reserve the right to reject early deliveries without waiving timely delivery.
- 3.7 Unconditionally accepting delivery of the subject of the contract that is not on time does not constitute a waiver of compensation for any further-reaching claims (in particular for compensation of damages) incurred by us or arising for us as a result of the late delivery.
- 3.8 When changes occur the supplier is obliged to inform BRUSA immediately. Example of changes are; raw material, specifications and/or production locations, facilities and processes. The Supplier is obliged to describe the objectives, opportunities and risks and have to evaluate the change together with BRUSA. The supplier shall notify such changes in written form in advance. Changes are to be released by BRUSA. After a Change the supplier and BRUSA have together to evaluate whether new initial samples are necessary.

## **4 Place of Performance, transfer and risk**

- 4.1 Place of performance is the place to which delivery is to be made in accordance with the order.
- 4.2 The Supplier bears the risk until acceptance of the subject of the contract by us or our representative at the place to which delivery is to be made in accordance with the order.

## **5 Force majeure**

- 5.1 Force majeure means events that are unforeseeable and unavoidable and beyond the area of influence of the affected party and for which the affected party is not responsible ("force majeure").
- 5.2 The party affected by an event of force majeure must do everything reasonable to overcome or mitigate it and adapt its obligations in good faith to the changed circumstances. Notwithstanding the foregoing, during the period in which the Supplier is affected by force majeure, we will be released from accepting delivery and will be entitled to procure the delivery item from third parties and to reduce the quantities ordered without having to compensate the Supplier for this. For the duration of such events, the contractual obligations will be deemed suspended and the affected party will be released from its obligation to perform to the extent of the effect of the force majeure event.

5.3 If the delivery/service due to the delay caused by force majeure is no longer acceptable for us - taking economic aspects into account - (in particular if an event of force majeure persists for more than 60 consecutive days or for more than 60 days with interruptions during a total period of 365 days) we will be entitled to withdraw from the affected contract (or from the part not yet performed). In this case, neither party may claim compensation from the other party for any losses incurred. The existing obligations for delivery items already delivered will remain unaffected. We will only accept partial deliveries after an express agreement to this effect.

## **6 Notice of dispatch and invoice**

6.1 One copy of delivery notes and packing slips must be enclosed with each delivery. The documents must state the following: order number, quantity and quantity unit, article description with our article number as well as the outstanding quantity in the case of partial deliveries.

6.2 One copy of the invoice must be sent separately for each individual order stating the invoice number and order number, as well as other features to enable it to be properly allocated, to [invoice@brusatechnology.com](mailto:invoice@brusatechnology.com) and must not be enclosed with the consignment.

6.3 Unless otherwise agreed in writing, the prices will be understood as fixed prices and 'delivered duty paid' (DDP according to Incoterms 2020) including packaging. Any VAT is not included.

## **7 Terms of payment, assignments, retention**

7.1 Unless otherwise agreed, the invoice will be due for payment within 30 days with 2 % discount or within 60 days net. The period will commence upon receipt of the complete subject of the contract and receipt of the invoice. The acceptance of the subject of the contract is a prerequisite for payment.

7.2 Insofar as certificates or material tests have been agreed, these will form an integral part of the delivery and will be sent to us together with the delivery. Without this, the Supplier's claim for payment will not become due.

7.3 In the absence of a written agreement to the contrary, the Supplier is not entitled to assign a claim against us to a third party or to have it collected by a third party.

7.4 The Supplier will only be entitled to rights of retention if its counter-claims have been finally and bindingly determined by a court of law, are undisputed or have been recognised by us in writing. Furthermore, the Supplier is authorised to exercise a right of retention providing that its counterclaim is based on the same contractual relationship.

## **8 Duty to inspect, quality assurance, claims for defects, limitation period, subcontractors**

8.1 We reserve the right to accept the subject of the contract only after checking its correctness and suitability. Our incoming goods inspection is generally limited to type, quantity and externally visible transport damage. We have no further inspection duty, in particular we assume that a proper quality control has been carried out at the Supplier.

8.2 The Supplier has a duty to set up a quality management system in accordance with the provisions of IATF16949, but at least in accordance with ISO/TS 16949, and to apply these provisions within the framework of the business relationships with us. The Supplier will in particular have a duty to carry out quality control which is suitable in terms of type and scope and which corresponds to the current state of the art.

8.3 The Supplier warrants and represents that the subject of the contract and/or services are free from defects, i.e.

- a) have the agreed characteristics (in particular, they comply with the agreed specifications and drawings),
- b) correspond to the initial samples approved by us,
- c) have been manufactured in accordance with the agreed processes,
- d) comply with the statutory and regulatory provisions of the possible target markets relevant to the subject of the contract,
- e) are free from development errors (unless the design of the subject of the contract was specified by us),
- f) do not infringe rights of third parties (e.g. intellectual property rights of third parties),
- g) are free from defects in material and insofar as qualities have not been expressly agreed upon
- h) correspond to the current state of the art and
- i) are suitable for the contractually designated purpose (where the Supplier is aware of this).
  - a. Irrespective of whether defects are (objectively) immediately recognisable or concealed, we may give notice of defects recognised within the warranty period within 30 days and, at our discretion, request either rescission (reversal step by step), price reduction (reduction), cost free replacement delivery or cost free rectification of defects. The right to assert claims for compensation of damages (also with regard to indirect losses) remains reserved in any case.
  - b. If we incur additional costs as a result of the Supplier's defective delivery or service, in particular transport, travel, labour, installation, removal or material costs or costs for an incoming goods inspection or sorting costs exceeding the usual scope, the Supplier will bear these costs. This will not apply insofar as the corresponding measures were not necessary in principle or were not appropriate in terms of amount.
  - c. The warranty period is 36 months; it begins as of the time of acceptance of the goods. The warranty period for improved or replaced goods will begin anew.

8.4 Broken or defective parts shall be made available - if possible - by BRUSA to the supplier for examination purposes. Any costs directly and indirectly accrued in such case shall be borne by the supplier. The supplier shall analyse the defect and immediately inform BRUSA of the causes, corrective and preventive measures taken and their effectiveness using an 8D Report, which must be completed adhering to the form indicated by BRUSA. 8D-Reports are handled with the online system BABTEC-QUBE. The supplier is obliged to register in the BABTEC system. The system is free of charge. <https://www.babtecqube.com>

8.5 If, for sensible and comprehensible reasons, the need occurs to provide BRUSA with products which do not meet the terms agreed upon, especially with regard to the stipulated specifications, the supplier undertakes to timely inform BRUSA in written form. All deliveries carried out with BRUSA's written concession shall be unambiguously labelled by the supplier in accordance with BRUSA's requirements.

## 9 Product liability, recall

9.1 If a claim is brought against us on the basis of product liability, the Supplier must indemnify us against such claims providing that and to the extent that the loss was caused by a defect in the subject of the contract supplied by the Supplier or another breach of duty by the Supplier. In cases of liability requiring at least negligence, however, this will only apply if the Supplier is at fault; if the cause of the loss lies within the Supplier's area of responsibility, the Supplier will be responsible for proving that it is not at fault.

9.2 In the cases falling under clause 9.1, the Supplier will bear all costs and expenses, including the costs of any legal protection. In all other respects the statutory provisions apply.

## **10 Provision of items**

10.1 Items provided by us, such as materials, parts, containers and special packaging, will remain our property. These may only be used for their designated purpose. Materials will be processed and parts assembled for us. It is agreed that we are co-owners of the goods manufactured using our materials and parts on the basis of the ratio between the value of the materials provided by us and the value of the entire product.

## **11 Documents and confidentiality**

11.1 All business or technical information made available by us (including characteristics which can be derived from items, documents or software handed over, and other knowledge or experience) must, to the extent that there is no evidence that they are in the public domain, be kept confidential against third parties and may only be made available to those persons at the Supplier's own business who must necessarily be involved for the purpose of providing performance and who are also subject to a duty of confidentiality. They remain our exclusive property. Such information may not be reproduced or used commercially – apart from for the purpose of the deliveries – without our prior written consent.

11.2 If we so request, such information (where appropriate, including copies made or drawings) and items temporarily loaned must be returned to us or destroyed without undue delay and in their entirety. We reserve all rights to such information (including copyrights and industrial property rights such as patents, utility models, etc.). Insofar as such rights have been made available to us by third parties, this reservation of rights will also apply in favour of the third-party beneficiaries.

11.3 If the Supplier provides contractual services or deliveries on the basis of documents drafted by us, such as drawings, models and the like or on the basis of our confidential information or with our tools or copied tools, these may neither be used by the Supplier itself nor offered or made accessible to third parties.

## **12 Export control and customs**

12.1 The Supplier has a duty to inform us in its business documents of any authorisation requirements for (re-)exports of its goods in accordance with Swiss, EU, US export and customs regulations as well as the export and customs regulations of the country of origin of its goods. For this purpose, the Supplier must provide the following information at least in its offers, order confirmations and invoices for the relevant goods: - the export control number in accordance with the Goods Control Ordinance (GVK) of 3 June 2016 or corresponding items in other relevant export control lists, - for US goods the ECCN (Export Control Classification Number) in accordance with the US Export Administration Regulations (EAR) - the commercial origin of its goods and the components of its goods, including technology and software, - whether the goods were transported through the USA, manufactured or stored in the USA, or manufactured using US technology, - the statistical goods number (HS code) of its goods, as well as - a contact person at its company for the purpose of clarifying any queries on our part.

12.2 At our request, the Supplier has a duty to provide us with all further foreign trade data relating to its goods and their components in writing and to inform us in writing without undue delay (before delivery of corresponding goods affected by this) of all changes to the above data.

## **13 Code of Conduct**

13.1 The Supplier acknowledges the unrestricted applicability of our Code of Conduct, available at our Homepage, for all business relationships with us. If the Supplier breaches these obligations, we are entitled, without prejudice to

further claims, to withdraw from an order or to terminate the contract with the Supplier without notice and to claim compensation for the damages resulting from such breach of contract.

**14 Place of jurisdiction, applicable law**

- 14.1 Should a provision of these Terms and Conditions of Purchase and any further agreements be or become invalid and/or unenforceable, the validity and enforceability of the remaining terms and conditions will not be affected. The parties will have a duty to replace the invalid or unenforceable provision by a provision which most closely reflects, from an economic perspective, the invalid or unenforceable provision. The same will apply in the case of a regulatory gap.
- 14.2 The exclusive and mandatory place of jurisdiction for all disputes arising under or in connection with the business relationship is the ordinary court of the city of St. Gallen, Switzerland. Despite this, BRUSA will have a right to bring an action against the Supplier at its place of business.
- 14.3 All legal relationships between us and the Supplier will be governed exclusively by Swiss law, excluding the conflict of laws rules (IPR) and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).