

## General Terms and Conditions of Purchase of Bode GmbH

### Section 1 General terms - scope

(1) Our General Terms and Conditions of Purchase apply to all business relations with our business partners and suppliers involving the supply of goods and/or the provision of services, irrespective of whether the Supplier effects performance itself or through sub-contractors.

Our General Terms and Conditions of Purchase shall be exclusively applicable; we shall not recognise any terms and conditions of the Supplier that contradict with or depart from our own General Terms and Conditions of Purchase unless we have expressly consented to their applicability in writing. Our General Terms and Conditions of Purchase are also applicable in cases where, with knowledge of conditions on the part of the Supplier which contradict or deviate from our General Terms and Conditions of Purchase, we accept a delivery from the Supplier without reservation.

(2) Our General Terms and Conditions of Purchase shall only apply in respect of entrepreneurs [*Unternehmer*] within the meaning of Section 310(1) of the German Civil Code [*Bürgerliches Gesetzbuch* - BGB]. They may be consulted at any time on our website [www.bode.eu](http://www.bode.eu).

(3) Our General Terms and Conditions of Purchase shall apply until specified otherwise by us, including for all future supplies by the Supplier, even if not expressly agreed to on each occasion. Any exceptions agreed to shall only apply for the supply for which they have been confirmed in writing.

(4) The Supplier consents to the usage and storage of its data for the purpose of the agreed contractual activities.

### Section 2 Orders

(1) The Supplier is obliged to accept our orders within a deadline of 1 week, failing which we shall be entitled to cancel the order at no charge.

(2) Supplies shall only be made on the basis of our orders. Our orders shall only be binding if placed by us in writing or electronically or, in the event that they are placed orally or over the telephone, after they have been confirmed by us in writing or

electronically, stating the order number. The same shall apply to any oral side agreements or subsequent changes to the order.

### Section 3 Prices - invoice - terms of payment

(1) The price stated in the order shall be binding. The prices agreed to are fixed prices. No additional claims of any type may be made. Unless agreed otherwise, prices shall be quoted DDP ("delivered duty paid", Incoterms 2010) to the delivery destination specified in the order and shall include packaging but not value added tax according to law.

(2) A proper invoice shall be issued in accordance with legal requirements as well as the terms of the order. Invoices must state the invoice number, order number and any other order references, and must be sent to us by e-mail to: [rechnung@bode.eu](mailto:rechnung@bode.eu). Any invoices that have not been drawn up in the required manner shall only be deemed to have been received by us at the time they are rectified.

(3) In the event that delivery is to be made from a territory outside the EU customs territory, a copy of the invoice or a pro forma invoice shall be included along with the shipment of goods.

(4) Unless agreed otherwise in writing, payments shall be made 14 days after delivery and receipt of the invoice with a discount of 2% or within 30 days without deductions.

The relevant periods for payments and discounts shall start to run from receipt of the invoice, and not from receipt of the goods. For services they shall not start to run until acceptance thereof, unless we are in default of acceptance. In the event that performance comprises the provision of documentation or other written materials, the relevant periods shall not start to run until such materials have been presented to us as required under the contract.

(5) We shall be entitled to offset or withhold payments according to law. We shall also be entitled to withhold any payments due in the event that we have any claims against the Supplier in relation to incomplete or defective performance.

(6) We shall not be deemed to be in default of payment unless we have previously received a reminder.

#### **Section 4 Scope of delivery - delivery period - liquidated damages**

(1) The scope of delivery shall be determined in accordance with the order placed by us.

(2) The delivery date specified in the order shall be binding.

(3) Deliveries shall be made during ordinary business hours. Information concerning our business hours must be requested from us.

(4) The Supplier undertakes to use environmentally friendly products and procedures, insofar as financially and technically feasible. Upon request by us, the Supplier shall issue free of charge a procurement certificate for the goods supplied.

(5) The Supplier shall be obliged to inform us in writing without undue delay, stating the reasons, in the event that any circumstances arise or become known to it that will prevent the agreed delivery deadline from being complied with. The expected duration of the delay must therefore be reported in writing without undue delay.

(6) In the event of delayed delivery, we shall be entitled to charge liquidated damages in the amount of 1% of the value of the shipment for each completed week, up to a maximum of 5%; the foregoing shall be without prejudice to any other claims available according to law (withdrawal and damages in lieu of performance). If we accept the delayed delivery, we shall claim the liquidated damages at the latest at the time of the final payment.

The Supplier shall be entitled to demonstrate to us that no losses or significantly lower losses were incurred as a result of the delay.

#### **Section 5 Delivery - transfer of risk - documents - packaging**

(1) Unless agreed otherwise in writing, delivery shall be included within the price (DDP delivery destination, INCOTERMS 2010). The Supplier shall bear the risk of accidental loss or deterioration,

including for DDP deliveries, until the goods have been handed over at the delivery destination.

(2) Any partial deliveries must be approved by us.

(3) The maximum permitted tolerance on the quantity delivered shall be +/- 10%.

(4) The proper delivery papers / documents shall be enclosed along with the delivery. These must state the object, the order items, the quantity, the weight, the packaging, the type of delivery and marking along with our order number. Any provisions applicable to the transportation of hazardous goods must be complied with, and in particular any hazardous goods must be clearly marked as such. The Supplier shall bear liability for the consequences of any delivery papers / documents that are incorrect or incomplete or that are provided late.

(5) Shipments shall be properly packaged. Any excessive or environmentally damaging packaging must be avoided. We shall be entitled at our choice to return the packaging to the Supplier at its cost, to utilise it ourselves or to dispose of it. In the event that packaging is invoiced separately, the Supplier shall reimburse us 50% of the invoice value of the packaging upon its return, provided that it is in good condition.

#### **Section 6 Information obligations**

(1) The Supplier shall give us prompt written notice concerning any changes to production process, changes to materials or input components for goods or services, the relocation of production locations as well as any changes to procedures or facilities for inspecting parts or for conducting other quality assurance measures. We shall be entitled to carry out the necessary examinations in order to establish whether the changes could have any adverse implications for the product. The Supplier shall upon request provide the necessary documents for this purpose and enable any audits to be carried out to the necessary extent.

#### **Section 7 Investigation of defects - liability for defects - limitation period**

(1) We shall be obliged to examine the goods without undue delay after delivery for any externally

recognisable quality defects or differences in quantity. Any defects ascertained shall be reported to the Supplier within two working days. Any quality defects or differences in quantity that are not externally recognisable shall be reported to the Supplier as soon as they are discovered during the ordinary course of operations.

(2) In the event of any defect, we shall be entitled to choose whether to require the supply of a replacement or the rectification of the defect. If the Supplier fails to act upon our request for the supply of a replacement or the rectification of the defect within a grace period set by us, we shall be entitled to carry out the necessary action ourselves at the cost of the Supplier or to arrange for a third party to do so. Should it not be necessary to set a grace period, we shall be entitled to take such action even without setting a grace period or to require the supply of a replacement. The foregoing shall be expressly without prejudice to the right to claim damages, including in particular to claim damages in lieu of performance.

(3) The Supplier shall bear all costs arising in relation to the identification and rectification of any defect, including in particular the costs of investigation, shipping, road, work and materials along with travel costs.

(4) The warranty period shall be extended for the duration of the period during which usage is interrupted for any supplies or parts thereof that cannot be used by us for the duration of any defect and/or work to rectify a defect. A new warranty period shall commence at the time the defect is resolved for supplies or parts thereof that have been rectified or replaced. The above-mentioned extensions of the warranty period shall only apply if the delay was caused by the rectification of a defect or the supply of a replacement.

(5) A limitation period of 36 months shall apply, calculated from the transfer of risk. In the event that any defects come to light during the warranty period, we shall be entitled to enforce the statutory warranty rights at our choice and, in addition, to claim compensation for expenses and damages from the Supplier.

## **Section 8 Quality assurance - product liability - indemnification - public liability insurance cover**

(1) The Supplier shall carry out quality insurance of a suitable type and extent in accordance with the state of the art, proof of which it shall furnish to us upon request.

The Supplier shall conclude an appropriate quality assurance agreement with us upon request.

(2) In the event that any action is launched against us owing to a breach of statutory requirements, including in particular safety regulations or under national or foreign product liability law, the Supplier shall be obliged to hold us and our customers harmless in respect of all claims, insofar as caused by the supply effected by the Supplier. This indemnification shall also cover the costs of any precautionary recall campaign. Where possible and reasonable, we shall inform the Supplier concerning the content and extent of any recall campaigns that are to be carried out and shall grant the Supplier the opportunity to state its position.

(3) The relevant competent authorities shall be notified in consultation with the Supplier in accordance with the German Product Safety Act [*Produktsicherheitsgesetz, ProdSG*].

(4) The Supplier undertakes to obtain insurance for an appropriate amount against all risks relating to product liability, including the recall risk – for the duration of this contract, i.e. until expiry of the relevant limitation period for defects – and to present the insurance policy to us upon request for inspection and demonstrate that the insurance contract is still in place by furnishing confirmation of its insurance. It shall give notice immediately and unsolicited of the termination of the insurance contract. The extent and amount of any warranty and damages claims available to us shall not be limited to the extent of insurance cover. The Supplier's attention is drawn to the fact that we sell our products worldwide.

## **Section 9 Third-party rights**

(1) The Supplier warrants to us that the supply will not infringe any third-party rights. It undertakes at our written request to hold us or our customers

harmless in respect of any claims brought against us by a third party in the event of the failure to abide by this commitment.

(2) The Supplier shall be obliged to carry out subsequent performance at its own cost in order to rectify the defect so as to ensure that no third-party rights are thereafter infringed. The foregoing shall be without prejudice to any other rights available to us to reduce the price or to withdraw from the contract.

(3) A limitation period of 36 months shall apply to these claims, which shall commence upon the transfer of risk.

### **Section 10 Reservation of title - provision of equipment**

(1) Any reservation of title of the Supplier shall only be binding if it has been agreed to with us in writing separately from these General Terms and Conditions of Purchase.

(2) The Supplier warrants that the equipment shall be used exclusively for the goods ordered by us. It further warrants that it will insure the equipment against losses caused by fire, water and theft. In addition, any necessary maintenance work shall also be carried out. We shall retain ownership of the equipment.

### **Section 11 Export control - customs**

(1) The Supplier undertakes to comply with applicable national and international customs and foreign trade law. It must provide us in writing no later than 3 weeks after the order, or without undue delay in the event of any changes, with all information and data that we require in order to comply with the provisions of foreign trade law in the event of export, import or re-export, including in particular:

- export control declaration: confirmation that the goods delivered have not been included in the Export Control List (Annex AL to the German Foreign Trade and Payments Ordinance [*Aussenwirtschaftsverordnung*]) or in the EU Dual Use Regulation and are not subject to any further export restrictions / licensing requirements. The

Supplier further declares that it shall bear responsibility for all obligations under foreign trade law. Any existing embargo regulations, prohibitions and restrictions as well as any other limitations, in particular under customs law and as a result of international law and/or political measures concerning international trade, shall be complied with:

- all applicable Export Control List numbers, including the Export Control Classification Number according to the US Commerce Control List (ECCN);
- the commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) Code; and
- the country of origin (non-preferential origin) and, if required by us, supplier declarations concerning preferential origin (for European suppliers) or preference certificates (for non-European suppliers).

(2) In the event of a culpable breach by the Supplier of its duties according to Section 11(1), we shall be entitled to withdraw from the contract and to claim any resulting losses. The Supplier shall hold us harmless in this regard.

### **Section 12 Secrecy - Confidentiality**

Our diagrams, calculations, other documentation and materials must be used exclusively for our own purposes and exclusively to the extent approved by us and may not be reproduced or made available to third parties without our prior written approval. In addition, our orders and all related commercial and technical details must be treated by the Supplier as business secrets. The Supplier shall not be entitled to use our trade name or our logo.

### **Section 13 Place of jurisdiction - place of performance - applicable law**

(1) If the Supplier is a merchant [*Kaufmann*], the place of jurisdiction shall lie at the place of our registered office; however, we shall be entitled to initiate legal action against the Supplier also before the courts at its domicile.

(2) Unless agreed otherwise in writing, the place of performance for all delivery obligations shall be the delivery destination specified by us. If no such location is specified, the place of performance shall be the place of our registered office.

(3) The laws of the Federal Republic of Germany apply subject to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).