General Terms of Purchase and Procurement of Bühler GmbH

I. General information – scope
1. Our Terms of Purchase and Procurement shall apply exclusively; we shall not recognise contradictory terms and conditions of the supplier or terms and conditions on documents which deviate from our Terms of Purchase unless we had explicitly approved their validity in writing. Our Terms of Purchase shall also apply if we accept the delivery and/or works/services of the supplier without reservation in the knowledge of contradictory terms and conditions of the supplier which deviate from our Terms of Purchase and Procurement.
2. All agreements which are reached between us and the supplier for the purpose of executing this contract are to be recorded in writing in this contract.
3. Our Terms of Purchase and Procurement shall only apply towards purchases of goods and/or works/services to us, irrespective of their legal character (hereinafter “Object of Delivery”). They shall apply both to purchase contracts as well as contracts for work and services, work delivery contracts and to combined contracts.

II. Offer – documents
1. The supplier undertakes to accept our order within a deadline of one week.
2. The supplier is bound to its offers (§145 BGB) 4 (four) weeks from receipt of the offer.
3. We reserve the property rights and copyrights to diagrams, drawings, calculations and other documents; they may not be made accessible to third parties without our explicit written permission. They are exclusively to be used for the deliveries to be made and/or works/services to be rendered on the basis of our order; they are to be returned to us without request at the expiry of the term of the contract. They are to be kept secret towards third parties, the regulation of XI.5 shall apply accordingly in addition.
4. There is no entitlement to remuneration against us for offers, acquisition planning, draft work and other preliminary work of the supplier.
5. The supplier undertakes to make the instructions and documents, in particular also lists of spare parts and proof of procurement, which are necessary for us to use, the assembly, the service, the repair/rebuilding and the disposal of the Object of Delivery available to us free of charge.
6. The supplier has to send us a declaration of conformity in line with annex II to the EC Machine Directive separately relating to the Objects of Delivery.
7. The supplier has its registered seat in an EU/EEA country and if the supplier is obliged to send us a declaration of conformity relating to the Objects of Delivery the supplier undertakes to affix the so-called CE mark (=EC mark) to the Objects of Delivery.

III. Prices – terms of payment
1. The prices shown in the order is binding. In the absence of a deviating written agreement the price includes delivery DDP named place of destination (Incoterms 2010), including packaging.
2. The applicable rate of value added tax is not included in the price.
3. We can only process invoices if these – in line with the stipulations in paragraph 4 of this contract – are accompanied by our order number, the assembly, the service, the repair/rebuilding and the disposal of the Object of Delivery according to § 310 I BGB (German Civil Code).
4. We are entitled to the statutory claims for defects in full; we are in particular entitled to request remedy of the defects or delivery of a new object of delivery from the supplier at our choice. The right is explicitly reserved to damages, in particular that to damages instead of performance.
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6. The defects liability period for claims for defects of quality is 36 months, beginning from the passing of risk. If the passing of risk takes place with an acceptance and the passing of risk which takes place with an acceptance is delayed for reasons, for which are beyond supplier’s responsibility, the defects liability period for defects of quality shall begin when the Object of Delivery is made available for acceptance in written form. The claims for defects with regard to spare parts shall become statute-barred in 36 months beginning from their installation/commissioning.

For Objects of Delivery, which are exchanged within the framework of the subsequent performance and/or subsequently improved Objects of Delivery and their parts the statute-of-limitations shall begin with the termination of the subsequent satisfaction.

7. The total costs of the subsequent satisfaction, in particular costs for the search for the fault, the retrofitting costs, the installation and dismantling costs, the transport, route, labour and material costs as well as customs duties, shall be borne by the supplier.

VIII. Product liability - indemnification – cover by liability insurance

1. Insofar as the supplier is responsible for a product damage it undertakes to indemnify us from claims for damages of third parties at first request to the extent that the cause lies within its scope of control and organisation and it is liable itself in the external relationship.

In addition we can request that the supplier indemnifies us from all claims of our customers against us at first request if and inssofar as the supplier has initiated a cause for this which establishes liability through its Object of Delivery/service. For the indemnification from claims for damages directed against us outside of the scope of liability of the Product Liability Act this shall only apply if and inssofar as the supplier was at fault for the cause.

2. The supplier undertakes to maintain product liability insurance with a sum insured in a reasonable amount per physical injury/property damage – as a flat rate; if we are entitled to further claims for damages these shall remain unaffected.

IX. Property rights

1. The supplier shall be responsible for ensuring that no rights of third parties are infringed within the Federal Republic of Germany in connection with its delivery. By submitting the technical documentation supplier grants to us the unlimited right to commercially use and exploit said documentation for the issuance of documents relating to equipment/plants produced/distributed by us.

2. If a claim is asserted against us by a third party in this respect then the supplier undertakes to indemnify us from these claims at first written request; we are not entitled to reach any agreements with the third party – without the consent of the supplier – in particular not to reach a settlement.

3. The indemnification obligation of the supplier refers to all expenses necessarily incurred to us from or in connection with the assertion of a claim by a third party.

4. The statute-of-limitations is ten years, beginning from conclusion of the contract.

X. Reach regulations

1. The supplier shall be responsible for ensuring that its goods comply with the respective applicable and valid provisions of the regulations (EC) 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of chemical substances (REACH regulations) and that its goods have been preregistered or registered after expiry of the transitional periods insofar as necessary under the provisions of the REACH regulations.

Substances contain that have been pre-registered or registered after expiry of the transitional periods, insofar as the substance is not excluded from the registration as far as necessary under the provisions of the REACH regulations.

2. In line with the provisions of the REACH regulations the supplier shall make safety datasheets or the information which is necessary according to Art. 32 REACH regulations, available. Upon request it shall provide us the information according to Art. 33 REACH regulations.

XI. Reservation of title - provision - tools – non-disclosure obligation

1. Inssofar as we make parts available to the supplier we reserve the ownership hereto. Processing or conversion by the supplier are carried out on our behalf. If our reserved goods are processed with other objects which do not belong to us we shall acquire the co-ownership to the new object in the ratio of the value of our object (purchase price plus VAT) to the other processed objects at the time of the processing.

2. If the object made available by us is inseparably mixed with other objects which do not belong to us we shall acquire the co-ownership to the new object in the ratio of the value of the reserved object (purchase price plus VAT) to the other objects at the time of the mixing. If the mixing is carried out in the manner that the object of the supplier is to be seen as the main object then it shall be deemed as agreed that the supplier assigns us pro rata co-ownership; the supplier shall keep the sole ownership or the co-ownership to the parts.

3. Inssofar as the collateral rights, to which we are entitled according to Par. 1 and/or Par. 2, exceed the purchase price of all of our reserved goods which have not yet been paid by more than 10%, we are obliged to release the collateral rights at our choice at the request of the supplier.

4. We reserve the property to tools; the supplier undertakes to exclusively use the tools for the production of the goods ordered by us. The supplier undertakes to insure the tools belonging to us at the value as new at its own costs against damages through fire, water and theft. At the same time the supplier hereby now already assigns us all claims for damages from this insurance; we hereby accept the assignment. The supplier undertakes to carry out possible necessary service and inspection work as well as all maintenance and repair work to our tools at its own costs in time. It has to report possible interferences to us immediately; if it culpable fails to do this then claims for damages shall remain unaffected.

5. The supplier undertakes to maintain strict secrecy concerning all received diagrams, drawings, calculations and other documents and all non-obvious, commercial and technical information. They may only be disclosed to third parties with our explicit consent. The non-disclosure obligation shall also apply after processing of this contract; it shall lapse if and inssofar as the production know-how contained in the diagrams, drawings, calculations and other documents which were handed over has become general knowledge.

XII. Procurement of spare parts

Supplier shall supply spare parts at the respective market prices for a period of 10 years regarding technical/mechanical spare parts and for a period of 5 years regarding electrical/electronical spare parts from the date of acceptance of the Object of Delivery. In the event the Object of Delivery comprises Software its updates and support shall be made available for at least 10 years.

XIII. Code of Conduct/Legal Compliance

The Supplier will and will ensure that its employees, directors, officers, representatives, agents and sub-suppliers, shall in all respects and at all times adhere to the principles set forth in the Code of Conduct of Bühler AG from time-to-time in force for the companies of the Bühler group and their business activities. The valid Code of Conduct of Bühler is accessible on Bühler’s homepage www.buhlergroup.com.

Furthermore, the Supplier will and will ensure that its employees, directors, officers, representatives, agents and sub-suppliers will comply with all applicable legal requirements, whether local or foreign, including but not limited to any laws prohibiting corruption and bribery as well as with the Anti-Bribery and Anti-Corruption Rules of Bühler AG. Prohibited are in particular:

- Payments for undue services.
- Payments aimed at accelerating a process (“facilitation payments”).
- Payments without evidence of a receipt.
- Commissions not reflecting market conditions.
- Gifts.
- Over-invoicing and under-invoicing.

XIV. Place of jurisdiction – applicable law

1. The exclusive place of jurisdiction is our head office; we are however entitled to also file action against the supplier at the court of jurisdiction at its registered seat. Our head office shall also be an additional place of jurisdiction. The exclusive place of jurisdiction for actions against the supplier, which has no general place of jurisdiction in the Federal Republic of Germany, in addition to the statutory places of jurisdiction. Arbitration agreements reached by the parties have precedence.

2. The law of the Federal Republic of Germany shall apply to all legal relations, which arise from this contract and possible secondary and follow-up business transactions and the place of jurisdiction agreement under XII.1; the applicability of the United Nations Convention on the International Sale of Goods is excluded.