

## **BURGMANN PACKINGS GROUP GMBH**

### **BURGMANN PACKINGS GMBH**

### **BURGMANN PACKINGS LTD.**

### **BURGMANN PACKINGS END.SIZ.**

## **GENERAL PURCHASING CONDITIONS**

### **I. Area of Validity, Form**

1. The General Purchasing Conditions ("GPC") apply to all business relationships with our business partners and suppliers ("Vendors"). These General Purchasing Conditions apply exclusively in cases where the Vendor is an entrepreneur (§ 14 BGB), a legal entity constituted under public law or a special fund under public law.
2. These General Purchasing Conditions apply in particular, for contracts regarding the sale and/or delivery of movable goods ("Goods"), irrespective of whether the Vendor manufactures the goods himself (manufacture and supply contract) or purchases them from suppliers (sales contracts) (§§ 433, 650 BGB [*Civil Code*]). Unless otherwise agreed, the General Purchasing Conditions (GPC) are valid in the version valid at the time of the ordering through us or in any case in the version the Vendor was last informed of in text form as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.
3. These General Purchasing Conditions apply exclusively. Deviating, conflicting or supplementary general Terms and Conditions of business from the Vendor only then become part of the contract and only to the extent that we have expressly agreed to their validity in writing. This requirement for approval applies in any case, for example even if we accept the Vendor's deliveries without reservation in full knowledge of the Vendor's General Terms and Conditions of Business (T &C's).
4. Individual agreements made with the Vendor in individual cases (including subsidiary agreements, side agreements, supplements and amendments) shall in any case take precedence over these GPC. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or by our written confirmation.
5. Declarations relevant in law and notifications to the Vendor regarding the contract (e.g. setting deadlines, reminders, withdrawal) must be made in writing, i.e. in written or text form (e.g. by letter, e-mail, or fax). Legal requirements of form and further evidence, especially where doubt exists as to the authenticity of the declaring party, remain unaffected.
6. References to the validity of legal regulations only have significance with regards to clarification. Statutory provisions therefore apply even without such clarification, unless they have been directly amended or expressly excluded in these GPC.

### **II. Concluding Contracts**

1. Our order is considered binding at the earliest upon submitting our order or on confirmation in written or text form. The Vendor must notify us of any obvious omissions or errors in the order including order documents (e.g. spelling mistakes and errors in calculations) for correction or completion purposes prior to acceptance; otherwise the contract will be deemed not to have been concluded.

2. The Vendor must confirm our order in writing within a period of three days or must implement it unconditionally, in particular, by dispatching the goods (acceptance).
3. Delayed acceptance is considered a new proposal and requires our acceptance.
4. In the case of call-off deliveries, the Vendor must confirm receipt of a call-off to us immediately. A lack of confirmation does not prevent conclusion of individual contracts.

### **III. Delivery Period and Delay in Delivery**

1. The delivery time stated by us in the order is binding. If no delivery time is stated in the order and this has not otherwise been agreed, it is two weeks from the time of concluding the contract. The Vendor is obliged to inform us immediately in writing, if it is likely he will not be able to meet agreed delivery times, for whatsoever reason.
2. If the Vendor does not provide the service or does not provide it within the agreed delivery period or if he enters delay, then our rights - especially to withdrawal and damages - are determined in accordance with statutory provisions. The provisions in Section 3 remain unaffected.
3. If the Vendor is in delay, we shall be entitled - in addition to further legal claims - to demand lump-sum compensation for damages caused to us through delay, amounting to 1 % of the net price for each completed calendar week, but not more than a total of 5 % of the net price of goods delivered late. We reserve the right to prove that higher damages have occurred. The Vendor reserves the right to prove that no damages at all were incurred, or that only considerably reduced damages were incurred.

### **IV. Performance, Delivery, Transfer of Risk, Default of Acceptance**

1. The Vendor is not entitled to have the performance owing by him performed by third parties (e.g. subcontractors) without our prior written consent. The Vendor bears the procurement risk for his services, unless otherwise agreed in individual cases (e.g. limitation to stock).
2. The delivery is made "free ex works" to the place indicated in the order. If the place of destination is not specified and nothing to the contrary has been agreed, delivery shall be made to the place of business of the respective ordering company, i.e. to

Burgmann Packings Group GmbH in Waldenburg, Germany,

Burgmann Packings GmbH in Wolfratshausen, Germany,

Burgmann Packings Ltd. in Tallaght, Ireland, or for

Burgmann Packings End.Sız. to Tuzla-Istanbul, Turkey.

The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (fulfilment obligation).

3. Deliveries must be accompanied by a delivery note showing name and contact details of both Vendor and Buyer and date (of issue and of dispatch), the contents of the delivery (item number and quantity) and our order acknowledgement (date and number). If the delivery note is missing or incomplete, we are not responsible for any resultant delays in processing and payment. A corresponding dispatch note with the same contents must be sent to us separately from the delivery note.
4. In the case of direct deliveries to our customers (drop shipments), the supplier is prohibited from using customer data provided to him directly or indirectly for his own purposes, especially for direct business relations with our customers. Unless otherwise agreed, presentation and packaging of goods in case of drop shipments must be neutral and must bear no references to

the supplier. Our delivery note must be enclosed with the goods. Invoices must be issued to us, exclusively.

5. The risk of accidental loss and accidental deterioration of goods transfers to us on delivery at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, statutory provisions for production and supply contracts shall also apply mutatis mutandis in the event of acceptance. It is all the same for handover and / or acceptance, if we are in default of acceptance.
6. Statutory provisions apply should we be in default of acceptance. However, the Vendor must also expressly offer his services to us, if a specific or determinable period has been agreed for a transaction or cooperation on our part (e.g. providing materials). If we enter default of acceptance, the Vendor may request reimbursement of his additional expenses in accordance with statutory provisions (§ 304 BGB [*Civil Code*]). If the contract relates to an unjustifiable item which the Vendor must manufacture (one-off production), the Vendor is only entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

## **V. Prices and Terms of Payment**

1. The price stated in the order is binding. All prices are inclusive of statutory Value-Added Tax, unless this is displayed separately.
2. Unless otherwise agreed in individual cases, the price includes all services and ancillary services from the Vendor (e.g. assembly, installation) as well as all ancillary costs (e.g. proper and correct packaging, transportation costs including any transport and liability insurance).
3. The agreed price is due for payment within 60 calendar days of completed delivery and performance (including any agreed acceptance should it apply) and receipt of a correct invoice. If we make payment within 14 calendar days, the Vendor must grant us a discount of 3% of the net value of the invoice. In case of bank transfers, payment is deemed to have been made on time if our bank transfer instruction reaches our bank before expiry of the payment period; we are not responsible for delays caused by the banks involved in the payment process.
4. We are not liable for any interest on payments due. Statutory provisions apply to default for payments.
5. We are entitled to rights to offset and of retention as well as to petition non-performance of a contract to the extent permitted in law. We are especially entitled to withhold payments due, so long as we are still entitled to claims from incomplete or defective services from the Vendor.
6. The Vendor is entitled to offsetting and retention only in the case of counterclaims determined with legal effect or undisputed counterclaims.

## **VI. Confidentiality and Retention of Title**

1. We reserve intellectual property rights and copyrights to illustrations, charts and drawings, calculations, implementation instructions, product descriptions and other documents. Such documents must be used exclusively for the implementation of contracts and must be returned to us following completion of contracts. The documents must be kept secret and confidential from third parties, even after the contract had ended. The obligation to maintain secrecy does not expire until and to the extent that the knowledge contained in the documents provided has become general knowledge.
2. The above provisions apply mutatis mutandis to materials and substances (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Vendor for manufacturing purposes. Such objects must be stored

separately at the Vendor's expense - if they have not been processed - and must be insured to an appropriate level against deterioration and loss.

3. Any processing, mixing or combination (further processing) of items provided by the Vendor must be carried out on our behalf. The same applies to further processing of goods delivered by us, so that we are deemed to be the manufacturer and acquire ownership of the product in accordance with statutory provisions at the latest upon further processing.
4. Transfer of ownership of goods to us must take place unconditionally and regardless of paying the purchase price. However, if we accept offers from the Vendor in individual cases to transfer ownership conditional on payment of the purchase price, the Vendor's retention of title expires at the latest on payment of the purchase price for delivered goods. In the ordinary and correct course of business, we also remain authorised to resell the goods prior to payment of the purchase price with advance assignment of claims arising from these (alternative validity of the simple reservation of title extended to resale). In this way all other forms of retention of title are excluded, in particular: extended retention of title, redirected retention of title and retention of title extended to further processing.

## **VII. Defective Deliveries**

1. Statutory provisions apply to our rights in the event of material defects and defects of title for goods (including incorrect and short deliveries as well as improper assembly, defective assembly, incorrect operational or operating instructions) and in the event of other breaches of duty by the Vendor, unless otherwise specified below.
2. According to statutory provisions, Vendors are especially liable for ensuring that goods are of the agreed quality upon risk transferring to us. Any product descriptions which - in particular, through description or references in our order - are the subject of the respective contract or which were included in the contract in the same manner as these GPC, shall in any case be deemed to be agreements on quality. It makes no difference whether the product description originates from us, the Vendor or the manufacturer.
3. Contrary to § 442 Section 1 Clause 2 BGB [*German Civil Code*], we are also entitled to assert claims for defects without restriction, if the defect was still unknown to us at the time of concluding the contract due to gross negligence.
4. Statutory provisions (§§ 377, 381 HGB [*Commercial Code*]) apply to commercial obligations for inspection and for notifying defects with the following proviso: Our obligation to inspection is limited to defects which become apparent during our inspection of incoming goods with external approval including delivery documents (e.g. transport damages, incorrect or short deliveries) or which can be identified during our quality inspection by random sampling. If acceptance has been agreed, there is no obligation for inspection. Otherwise, it depends on the extent to which an investigation is feasible during the ordinary course of business, taking circumstances of the individual case into account. Our obligation to give notice of defects discovered subsequently remains unaffected. Irrespective of our duty of inspection, our complaint (notice of defects) will in any case be deemed immediate and timely if sent within five working days of discovery or, in the case of obvious defects, of delivery. The notification period for defects which are not obvious commences at the time at which we - or in the case of direct business our customers - ascertain or should have ascertained the defect.
5. Subsequent performance also includes the removal of installed defective goods and re-installation of same, if the goods have been installed in another item or attached to another item in accordance with their type and intended use; our statutory claim to reimbursement of corresponding expenses remains unaffected. The Vendor bears the costs and expenses necessary for inspection purposes and subsequent performance even if it turns out that no defect was in fact present. Our liability for damages in the event of an unjustified request to remedy defects remains unaffected; in this respect, however, we shall only be liable if we recognised or grossly negligently failed to recognise that no defect existed.

6. Irrespective of our statutory rights and the provisions in Section 5, the following applies: If the Vendor does not fulfil his obligation to subsequent performance - at our discretion by remedying the defect (rectification) or by delivering an item free from defects (replacement delivery) - within a reasonable period set by us, we shall be entitled to remedy the defect ourselves and request reimbursement from the Vendor of costs and expenses incurred or an appropriate advance payment. If subsequent performance by the Vendor failed or if it is unreasonable for us (e.g. due to special urgency, risk to operational safety or the imminent occurrence of disproportionate damages), no deadline need be set; we will inform the Vendor of such circumstances without delay, wherever possible in advance.
7. Otherwise, in the event of a material defect or defect of title, we shall be entitled to reduce the purchase price or withdraw from the contract in accordance with statutory provisions. In addition, we are entitled to claim damages and reimbursement of expenses in accordance with statutory provisions.

## **VIII Supplier Recourse**

1. We are entitled to claims for recourse determined in law within a supply chain (supplier regress in accordance with §§ 445a, 445b, 478 BGB [*Civil Code*]) without restriction in addition to claims based on defects. We are especially entitled to claims from the Vendor for exactly the type of subsequent performance (rectification of defects or replacement delivery) which we owe our customer in an individual case. Our statutory right of choice (§ 439 Abs. 1 BGB [*Civil Code*]) is not restricted by this.
2. Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of costs and expenses in accordance with §§ 445a Section 1, 439 Sections 2 and 3 BGB), we will notify the Vendor and request a written statement, whilst briefly explaining the facts of the case. If a substantiated statement is not made within a reasonable period and no amicable solution is brought about, the actual claim for defects we grant shall be deemed as being owed to our customer. In this case, the Vendor is responsible for providing proof to the contrary.
3. Our claims arising from supplier recourse also apply if the defective goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

## **IX. Manufacturer's Liability**

1. If the Vendor is responsible for product damages, he shall indemnify us from claims by third parties to the extent that the cause lies within his sphere of control and organisation and he himself is liable in the external relationship.
2. Within the scope of his obligation to indemnify, the Vendor must reimburse us costs and expenses in accordance with §§ 683, 670 BGB [*German Civil Code*] which arise from or in connection with third party claims, including recall actions we carry out. As far as possible and reasonable, we will inform the Vendor of the content and scope of recall measures and give him the opportunity to state his opinion. Further legal claims remain unaffected.
3. The Vendor must take out and maintain product liability insurance with lump sum cover of at least EUR 5 million euros per personal injury/property damage.

## **X. Statute of Limitations**

1. Mutual claims by contractual parties lapse and become time-barred in accordance with statutory provisions, insofar as nothing to the contrary is stipulated below.

2. Contrary to § 438 Para. 1 No. 3 BGB [*Civil Code*], the general period of limitation for claims based on defects is three years from transfer of risk. Insofar as acceptance has been agreed, the period of limitation commences on acceptance. The three-year limitation period also applies mutatis mutandis to claims arising from defects in title, whereby the statutory limitation period for claims in rem for surrender by third parties (§ 438 Section 1 No. 1 BGB) remains unaffected; furthermore, claims arising from defects in title do not lapse and become time-barred under any circumstances, as long as the third party may still assert rights against us, in particular in the absence of lapsing and the limitation period expiring.
3. Limitation periods for the sales of goods law including the above extension apply - to the extent permitted in law - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory period of limitation (§§ 195, 199 BGB [*Civil Code*]) applies here, unless applying the limitation periods for the sales of goods law in individual cases leads to a lengthier period of limitation.

## **XI. Choice of Law and Place of Jurisdiction**

1. If the Vendor is a businessman in the sense of the German Commercial Code [*HGB*, a legal entity constituted under public law or a special fund constituted under public law, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship is our registered offices in Waldenburg, Germany. The corresponding applies if the Vendor is an entrepreneur in the sense of § 14 BGB [*Civil Code*]. In all cases, however, we are also entitled to raise a legal action at the place of performance of the delivery obligation in accordance with these GPC or an overriding individual agreement or at the Vendor's general place of jurisdiction. Overriding statutory provisions, especially regarding exclusive responsibilities, as well as deviating individual agreements remain unaffected.
2. If the Vendor has its registered office outside the boundaries of the Federal Republic of Germany, we shall also be entitled, at our discretion, to have all claims, disputes or differences of opinion arising from business relations with the Vendor finally and bindingly decided in accordance with the Rules of Arbitration of the Chamber of Industry and Commerce for the Stuttgart Region (IHK Region Stuttgart), under exclusion of the ordinary course of law. The arbitration tribunal must be based in Stuttgart. The arbitration proceedings will be held in German unless the Vendor request English to be the language for the proceedings.
3. These General Purchase Conditions and the contractual relationship between us and the Vendor, including the aforementioned arbitration agreement, are governed exclusively by the laws of the Federal Republic of Germany to the exclusion of uniform international law, in particular the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG - "Vienna Convention").