

# General Terms and Conditions of Purchase 06/2012

## I. Scope

- (1) Unless otherwise agreed in individual cases, these General Terms and Conditions of Purchase ("Terms and Conditions of Purchase") shall apply to any and all purchase orders placed by BÖWE SYSTEC GmbH ("BÖWE SYSTEC") with a supplier as well as to the resulting goods and/or services delivered by the supplier irrespective of the underlying legal premise.
- (2) All agreements made between BÖWE SYSTEC and the supplier for the purpose of concluding, changing, supplementing or executing a contract or for acknowledging any of the supplier's general terms and conditions with the effect of altering these Terms and Conditions of Purchase shall only be effective if made in writing.
- (3) These Terms and Conditions of Purchase shall only apply to entrepreneurs as defined in Section 14 German Civil Code. They shall also apply to all future transactions with the supplier.
- (4) BÖWE SYSTEC expressly declares that the terms and conditions and/or delivery terms of the supplier shall not be acknowledged. The acknowledgement of such conditions shall only be effective if expressly accepted by BÖWE SYSTEC.

## II. Prices, terms of payment

- (1) The price set out in the purchase order of BÖWE SYSTEC shall be binding insofar as it is based on the supplier's binding offer. Unless otherwise agreed, all prices are quoted DDP (Incoterms 2010) Augsburg or the relevant office designated in the purchase order.
- (2) Invoices can only be processed if the order number specified by BÖWE SYSTEC in the purchase order is quoted. The supplier shall bear sole responsibility for any problems resulting from non-compliance with this obligation.
- (3) Unless otherwise explicitly agreed, invoices may not be issued until such time as delivery/performance has been effected in full.
- (4) Payments shall be made from the registered office of BÖWE SYSTEC within 14 bank working days of receipt of the invoice less 3% discount or within 30 days net.
- (5) BÖWE SYSTEC shall be entitled to set off and withhold monies to the extent legally permissible.

## III. Delivery, delivery period, default, contractual penalty

- (1) All deliveries shall be effected DDP (Incoterms 2010) Augsburg factory or the office designated in the purchase order.
- (2) Delivery dates confirmed by the supplier shall be binding; arrival of the delivery to the designated destination shall be deemed to be the time of delivery.
- (3) The supplier shall promptly notify BÖWE SYSTEC in writing if it becomes apparent that the guaranteed delivery time cannot be maintained.
- (4) If the supplier defaults on the contractually agreed performance, BÖWE SYSTEC shall be entitled to claim for damages corresponding to at least 0.5% of the value of the delivery on which the supplier has defaulted for each week of default or part thereof up to a maximum amount of 5% of the value of the order however. BÖWE shall be entitled to assert any additional damages in accordance with the statutory provisions.
- (5) The supplier shall inform BÖWE SYSTEC about any and all national and international export control regulations applicable to a delivery, in particular about US re-export provisions. The supplier shall be liable for damages resulting from any delivery delays that are incurred by BÖWE SYSTEC as a result of any non-compliance with this obligation on the supplier's part.

## IV. Documents, packaging

- (1) The supplier shall specify the BÖWE SYSTEC purchase order number on all delivery papers and dockets. BÖWE SYSTEC shall not be liable for delays in processing that are caused by a failure to specify the purchase order number.
- (2) If packaging is required, BÖWE SYSTEC shall only accept deliveries on 1200x800 mm Euro pallets, in Euro lattice box pallets or cardboard boxes with the "RESY" or "Green Dot" mark. Bags, shrink film hoods, stretch film and barrel hoops may only consist of PE or PP; fill material shall be either polystyrene or eco-paper.

## V. Inspection for defects, liability for material and legal defects

- (1) Unless otherwise agreed, BÖWE SYSTEC shall inspect the supplied goods within a reasonable period of time to check for any discrepancies in quality or quantity. Complaints will in all cases be deemed to be lodged on time if they are received by the supplier within 2 weeks of delivery of the goods to BÖWE SYSTEC. The supplier or seller shall be liable for any material or legal defects in accordance with statutory provisions.

## VI. Product liability, indemnification, general liability insurance

- (1) If the supplier is responsible for product damage, they shall undertake to indemnify BÖWE SYSTEC against any third-party claims for damages upon first request.
- (2) In this context the supplier shall furthermore compensate BÖWE SYSTEC for any expenditure as defined in Sections 683 and 670 of the German Civil Code resulting from or in connection with any recall action initiated by BÖWE SYSTEC. BÖWE SYSTEC shall inform the supplier about both the content and scope of the recall action in advance and grant the supplier the opportunity to submit an official statement, unless there is an imminent danger.
- (3) The supplier shall take out and renew product liability insurance with a minimum coverage of € 1 million for each instance of personal injury or damage to property; this cover shall take the form of a lump sum and apply to a period of one year.

## VII. Industrial property rights, secrecy

- (1) The supplier shall ensure that deliveries do not violate any third-party industrial property rights.
- (2) If third parties assert claims against BÖWE SYSTEC on the grounds of supplier deliveries, the supplier shall indemnify BÖWE SYSTEC against such claims upon first request.
- (3) The supplier's duty to indemnify BÖWE SYSTEC applies to any and all expenditure that BÖWE SYSTEC inevitably incurs as a result of or in connection with any claims asserted against it by a third party.
- (4) BÖWE SYSTEC shall retain all property rights and copyrights to images, drawings, calculations and other documents provided to the supplier. The supplier shall treat documents and information received as strictly confidential. Such documents and information may only be disclosed to third parties with the express approval of BÖWE SYSTEC. The obligation to maintain secrecy shall also apply after this contract has been performed; it lapses if and insofar as the industrial knowledge contained in the submitted images, drawings, calculations and other documents becomes or has become general knowledge.

## VIII. Reservation of title (utilities, tools)

- (1) If BÖWE SYSTEC supplies parts or materials to the supplier, BÖWE SYSTEC shall retain property rights to these goods ("conditional goods"). The supplier shall be entitled to process or convert the conditional goods for BÖWE SYSTEC. Title to the new item(s) shall be vested in BÖWE SYSTEC. Claims of the supplier according to Section 951 of the German Civil Code shall not be affected.
- (2) If the item(s) supplied by BÖWE SYSTEC is inseparably mixed or combined with other items which do not belong to BÖWE SYSTEC, title to the new property shall be co-vested in BÖWE SYSTEC on a pro-rata basis corresponding to the value of the conditional goods delivered in relation to the value of the other mixed items at the time of mixing. If the item of the supplier is considered to be the main contribution in the property resulting from mixing and combining, the parties hereby agree that the supplier will vest co-ownership in the relevant property on a pro-rata basis to BÖWE SYSTEC and hold the joint property in safe custody for us.
- (3) BÖWE SYSTEC reserves property rights to tools supplied. The supplier shall only use the tools made available to them by BÖWE SYSTEC for the purpose of manufacturing the goods ordered by BÖWE SYSTEC. The supplier shall insure such goods on a replacement value basis against fire and water damage and against theft at their own expense. The supplier shall perform any required maintenance and inspection work on time and at their own expense. The supplier shall immediately inform BÖWE SYSTEC about any incidents/faults.

## IX. Place of performance, place of jurisdiction, applicable law, partial invalidity

- (1) The place of performance shall always be the place where the ordered goods, works or services are to be supplied or delivered in accordance with the contract (point of receipt).
- (2) If the supplier is a merchant who has been entered in the Commercial Register, the exclusive jurisdiction shall be Augsburg.
- (3) Notwithstanding conflicts of law principles, these Terms and Conditions of Purchase shall be governed by the laws of the Federal Republic of Germany. The Hague Sales Convention and the United Nations Convention on the International Sale of Goods or other international conventions shall be excluded.
- (4) If one of the provisions of these Terms and Conditions of Purchase is or becomes invalid, other agreements concluded, including call-off orders and purchase orders, shall remain valid and all other provisions of these Terms and Conditions of Purchase remain in full force and effect.