



## Terms of Purchase

for Busch Produktions GmbH, Maulburg,  
Dr.-Ing. K. Busch GmbH, Maulburg,

Busch Dienste GmbH, Maulburg und Busch-Holding GmbH, Maulburg

Date: 08/2009

To all – including future – orders and contracts the following Terms of Purchase shall exclusively apply, unless otherwise agreed in writing. The terms of business of the Supplier or Contractor (hereinafter jointly referred to as the Supplier) shall only apply if we have agreed to them in writing. 'We' in the terms of these Terms of Purchase refers to the above-named company making the order.

### 1. Placing orders

1.1 Only written orders and agreements are binding. In particular, our employees are obliged to confirm verbal agreements or commitments in writing that surpass the contents of the written contract or amend the Terms of Purchase to our detriment.

1.2 The Supplier must immediately confirm all orders in writing. If we have not received order confirmation within 14 days of the order date, we are entitled to cancel the order without giving rise to any claims by the Supplier.

### 2. Prices

The prices agreed are fixed prices that include the packaging in accordance with point 3.1 and free of charges for the receiving factory.

### 3. Packaging and dispatch

3.1 The goods to be supplied must be packaged as standard or, at our request, with special packaging in line with our instructions.

3.2 The Supplier must observe the regulations of the carrier, haulier or forwarding agent.

3.3 We are entitled to return the packaging to the place of origin with carriage free and charge the Supplier for 1/3 of the calculated packaging value.

### 4. Delivery time, delivery

4.1 The agreed delivery dates and deadlines are binding. The delivery time runs from the order date. A delivery date or deadline is observed if the goods have been delivered to the receiving factory by the specified time.

4.2 If the Supplier realises that it is not possible to supply the delivery or service (hereinafter jointly referred to as the delivery), in full or in part, by the agreed deadline, it must inform us of this situation immediately, stating the reasons for it and the expected length of the delay.

4.3 Partial deliveries are only permissible if we have authorised them in writing.

4.4 In the event of delivery delays, we are entitled to claim 1.0% of the agreed price of the entire delivery for each complete week of delay, up to a maximum of 5%. This does not affect further legal rights. The Supplier is entitled to provide evidence of less damage. We reserve the right to assert this contractual penalty until final payment has been made.

4.5 All deliveries must come with a delivery note that specifies the ordering party, order number, article number and delivery quantity, as well as the transport company.

4.6 The period for fulfilling our contractual obligations shall be extended in the event of force majeure, strikes, disruptions in operations, power shortages, shortages of raw materials, riots and other non-foreseeable or unavoidable events for which we are not responsible, for the duration of the disturbance and in line with the extent of its effect. We shall immediately notify the Supplier of the start and end of any of the aforementioned obstacles.

### 5. Transfer of Risk

Risk passes to us once the delivery has been duly supplied to the receiving factory or accepted by us. This also applies in exceptional cases in which we use our own transport personnel.

### 6. Payments

6.1 Our payment is made – at our discretion – either within 14 days with a 3% discount or within 30 days as a net payment.

6.2 The payment term shall commence on full receipt of the goods in line with the contract or on acceptance of the services and receipt of a verifiable invoice, but not before the agreed date of supply.

### 7. Warranty

7.1 The Supplier shall warrant that on delivery, the delivered goods are free of all defects of quality or title, and complies with the state of the art, the applicable laws, safety and accident prevention regulations and the common technical and quality assurance standards (e.g. DIN, EN/ISO, VDE, CE mark, ATEX directive). If these standards are interpreted differently, the German version shall prevail.

7.2 On receipt, we will check the goods for obvious defects, identity, shortages and transport damage. No further obligation to inspect the goods shall exist. We shall notify the Supplier of any defects within an appropriate period following their discovery. The Supplier shall therefore waive the right to object to delayed notifications of defects.

7.3 In the event of defects, we shall be entitled, at our discretion, to request either a replacement delivery of the defective goods or their repair – including at the place of use. Furthermore, we are entitled, following the fruitless expiry of an appropriate grace period or – if it is no longer possible to establish a grace period due to particular urgency – after informing the Supplier, to resolve the defect ourselves, commission third-parties to resolve the defect or to procure a replacement for the defective goods at the Supplier's expense.

7.4 The period of limitation for making claims on defects is 36 months from the time of delivery or – if so agreed – from the time of acceptance.

7.5 If, following our notification of defects, delivered items are repaired or replaced, the period of limitation specified under point 7.4 shall start again in relation to these parts, unless

the subsequent performance is negligible or involves explicit goodwill from the Supplier.

### 8. Property rights

The Supplier warrants that the use of the supplied goods will not infringe upon any property rights (e.g. patents or registered designs), or any other rights or business or trade secrets of third parties – including in the country of use. The Supplier therefore undertakes to indemnify us from any claims by third parties at our first written request. However the Supplier is not bound by the previous clause if it manufactures the goods solely in line with our drawings and models and did not know or was not required to know that manufacturing the goods would result in the violation of third party rights.

### 9. General liability

9.1 In the event that a customer or other third party asserts a product liability claim against us, the Supplier undertakes to indemnify us from such claims at our first written request providing the violation was caused in full or in part by a fault with the product delivered by the Supplier. In cases of liability without fault, however, this does not apply if the Supplier is not at fault.

9.2 If the cause of the damage lies within the Supplier's area of responsibility, the evidence that the error caused the damages is sufficient, for the rest the burden of proof shall fall to the Supplier.

9.3 In all cases, the Supplier shall bear the costs and expenses proportionate to its share of responsibility or fault, including the costs of any legal action or product recall campaigns; this also applies to discernable or impending production series errors.

9.4 The Supplier is obliged to take out an appropriate insurance policy to cover its liability risks and provide us with evidence of this cover on request.

9.5 All claims for compensation against us – regardless of the type of claim – are excluded if we, our legal representative or vicarious agents have caused the damage through simple negligence. This exclusion from liability shall not apply in the event of personal injury or a breach of essential contractual obligations that pose a risk to the fulfilment of the purpose of the contract. In such cases, our liability is, however, limited to foreseeable damages which are typical of the contract.

### 10. Trade secret

10.1 The Supplier is obliged to regard all the details of the order and its deliveries and work, as well as all confidential information received from us consciously or accidentally as trade secrets and not to disclose them to third parties. Our company name can only be mentioned for promotional purposes with our prior written permission.

10.2 Documents and all other items such as prototypes, drawings, tools and models that

we provide the Supplier must be returned to us free of charge at our request. The Supplier must neither use such items for its own purposes nor make them accessible to third parties.

10.3 Should the Supplier fail to comply with this non-disclosure obligation, it undertakes to pay a contractual penalty of 20% of the order value unless it is not responsible for the breach. Furthermore, in the event of particularly severe breaches, we are entitled to terminate the entire contractual relationship with the Supplier with immediate effect and with no recourse to damages, and to request reimbursement of any payments already made. A particularly severe breach exists if the Supplier passes on the information it has acquired to third parties that are in competition with us.

## **11. Ownership of production resources**

11.1 Prototypes, models, tools, materials provided, drawings and other documents that we provide the Supplier or that the Supplier produces in line with our instructions (hereinafter jointly referred to as production resources) remain or become our property upon full payment. Instead of a transfer of ownership, the Supplier loans the production resources from us and we can request their return at any time, unless otherwise agreed in writing. The Supplier shall store the production resources that belong to us separately from other items that do not belong to us. Our ownership of the production resources must be noted both on the resources themselves and in the accounts. Upon termination of our business relationship, the production resources must be returned to us at our request. The Supplier must take out an appropriate insurance policy to cover loss or damage. The Supplier cannot use the resources for its own purposes or make them accessible to third parties.

11.2 Products manufactured using the documents (drawings, models etc.) drafted by us or on the basis of our confidential information or with our production resources or reproduced production resources cannot be used by the Supplier itself or offered or supplied to third parties.

## **12 Supplier's representatives**

12.1 If the Supplier's representatives work at our factory or for our customers, they must observe the house rules, the accident prevention regulations and all other safety and security regulations. The Supplier shall be liable for all damages that it or its representatives intentionally or negligibly cause in our factory or on our customers' premises.

12.2 The working hours and the materials provided by the Supplier must be confirmed in writing by a representative from our factory immediately upon execution of the work or by no later than on the same day as the execution.

## **13 Applicable law, place of jurisdiction, place of performance**

13.1 German law shall apply. The UN Convention on Contracts for the International Sale of Goods of 11/04/1980 is excluded.

13.2 The place of jurisdiction is the court responsible for our registered office. However, we are also entitled to involve the court responsible for the Supplier's registered office.

13.3 The place of performance for all deliveries and services is the receiving factory we have specified.