

# Purchase Terms and Conditions as of January 2021

BKS GmbH  
Heidestr. 71  
42549 Velbert

## § 1 General

1. All our purchase orders are exclusively based upon our following purchase terms and conditions. They shall be applicable in their most recent edition also for all future transactions with the supplier. The purchase terms and conditions become a subject of the contract at the latest when the purchase order is accepted. Contract terms and conditions possibly used by the supplier are contradicted herewith explicitly. Possible contract terms and conditions by the supplier are excluded, even if not explicitly contradicted by us. Deviations and amendments to the present purchase terms and conditions by the supplier shall be valid only with our explicit written confirmation; they are valid only for the transaction for which they have been made on an individual case basis. Moreover execution of our purchase order shall be deemed to be acknowledgement of the present purchase terms and conditions. 2. In so far as our "technical delivery terms and conditions" are likewise integrated into the contract, these take priority of the present terms and conditions which are likewise applicable apart from our "technical delivery terms and conditions". 3. Our purchase terms and conditions only apply towards companies acc. to § 14 [German Civil Code].

## § 2 Offer, Purchase Order, Contract Conclusion

1. Offers made by the supplier must fulfil the provisions of our demand for quotation regarding quality and quantity as well as regarding other provisions with respect to the goods to be supplied; if the supplier wants to deviate from our demand for quotation, special reference must be made to such possible deviations of the offer.
2. Our purchase order alone is relevant for the scope of delivery.
3. Our purchase orders have to be confirmed always immediately on receipt but not later than within two (2) weeks by specifying our purchase order data. If we do not receive a confirmation of this kind within two weeks after the date of the order, we shall no longer be bound by the order unless another agreement has been made, e.g. a waiver of order confirmation. In the event of an express waiver of an order confirmation on our behalf, the order shall continue to apply.
4. The supplier shall comply with all statutory provisions and specifications within the scope of concluded contracts.

A significant component of the contracts which are concluded in accordance with these purchase terms and conditions is the obligation to submit supplier declarations in accordance with the particular applicable EC regulations. If long-term supplier declarations are to be applied, we shall be informed in writing, without needing to issue reminders, about changes to the original property with the corresponding order confirmation. If the supplier declarations prove to be inadequately indicative or incorrect, and we are obliged by the customs authorities, for that or any other reason, to present an INF4 information sheet, the obligation shall apply, if we request it, for us to be provided with correct, complete INF4 information sheets confirmed by the customs authority concerning the origin of the goods. If we or our customers have a charge imposed on us subsequently by a customs authority due to our faulty declarations of origin, or if we or our customers suffer any other financial disadvantage as a result and the fault is attributable to incorrect information about the origin provided by the vendor, then the vendor shall be liable for this. Further claims for damages shall be unaffected as a result.

If the supplier delivers products in the sense of Art. 3 of EC Directive no. 1907/2006 on the registration, evaluation, authorization and restriction of chemicals (REACH regulation), the supplier is responsible for adequately complying with its obligation to pass on certain information acc. to Art. 33 of the REACH regulation. Furthermore, the supplier undertakes to send its certificate as an approved economic operator or to submit a safety declaration for approved economic operators (AEO) in order to guarantee safety in the international supply chain.

The supplier undertakes to comply carefully with the regulations of the Construction Products Regulation acc. to EU Regulation No. 305/2011 as well as the corresponding export regulations in this regard and to provide the prime contractor with all the correspondingly required information without delay. The prime contractor shall be informed without delay about deviations. This also applies to checks and information undertaken at the supplier.

Where products are subject matter of the contractual relationship, which are subject to the VAT reverse-charge process (e.g. appendix 4 to § 13 b para. 2 no. 11 of VAT law in Germany (UStG)), these must be clearly identified in the invoices and taken into account when presenting the invoice. The legal specifications (§ 14 para. 5 clause 1 of the VAT law in Germany (UStG)) must be applied.

We are certified according to DIN EN ISO 50001 (energy management). Our suppliers are obliged to produce their products energy-efficiently and to prove this to us, in particular that they deliver the best possible energy balance values under the given conditions. We would like to point out that, in addition to the quality of the products and services, environmentally oriented actions as well as the supplier's energy efficiency and energy balance can be a selection criterion when awarding a contract.

## § 3 Prices

1. All prices are fixed prices for the entire contract execution period without VAT in the statutory amount to be invoiced separately. This applies also to standard and flat-rate prices.
2. If prices have neither been fixed in the offer nor in the order confirmation nor by agreement, the supplier must inform us of the prices prior to order execution for confirmation. Within the scope of current business relations, the last price charged by the supplier for these services or comparable services shall be valid, if no explicit price agreement exists.

3. If no different written agreement exists, prices include freight charges (delivery "free domicile"), transport insurance and packing. 4. In the event of foreign purchase orders, duty-paid goods have to be supplied at the agreed upon prices. 5. Price changes will only be accepted for metals quoted on the stock exchange and only, if it is customary in trade. Moreover we do not agree to price adjustment or price increase clauses nor to agreement of a list price valid the day of delivery (today's price clauses).

## § 4 Delivery Time

1. The delivery time and delivery dates are binding. The delivery time starts on the date of our purchase order letter, delivery day is the day of the receipt of goods by us or at the delivery address specified by us, for services the day of acceptance.
2. If no delivery time has been stipulated, the service has to be rendered immediately, if nothing else results from the circumstances. Partial services can be refused by us.
3. The supplier is obliged to inform us immediately in writing, if circumstances occur or become recognizable, from which results that the delivery time specified cannot be kept. This applies also to circumstances for which the supplier is not responsible.
4. In the event of delayed delivery we shall be entitled to request indemnity for delay in the amount of 1 % of the delivery value per week completed but not more than 10 % of the delivery value; further statutory claims are reserved. The supplier shall be entitled to prove that no damage or far less damage occurred due to the delay.
5. We do not agree to limitations of liability and non-liabilities of any type whatsoever by the supplier in the event of delayed delivery.
6. The prime contractor has established an internal dunning system. According to this, reminders/dunning messages are sent as follows:
  - 1st reminder (= delivery reminder): this is always 8 days before the delivery deadline (calendar days)
  - 2nd reminder (= actual reminder): 3 days after delivery date
  - 3rd reminder (= observation of delivery delay): 6 days after delivery deadline (setting deadline and reference to legal consequences)

A subsequent deadline is set in the 3rd reminder. After the 3rd reminder stage has expired, the prime contractor is entitled, without setting a further deadline, to undertake alternative procurement at the supplier's expense and/or to demand compensation in damages. From this 3rd reminder onwards, the prime contract shall be entitled to have recourse to all legal rights and possibilities. In the event that reference is made to the 1st, 2nd or 3rd reminder in corresponding letters, the aforementioned applies unless a different agreement is reached.

The prime contractor is entitled to keep a combined dunning list for various orders, in which the various dunning levels are referred to as the basis for each individual delivery. The prime contractor shall send corresponding overviews, although there is no right to receive them, and these then take on the corresponding legal character as referred to above.

## § 5 Invoice and Payment Terms and Conditions

1. The invoice has to be mailed separately by post with enclosure of a clearly marked duplicate. It must be provided with our reference number and our purchase order number; all invoices must fulfil the provisions of the VAT law. Invoices, which do not fulfil the above provisions, can be returned to the supplier for completion.
2. Unless otherwise agreed upon, payment will be made in Euro – within 14 days less 3 % discount – within 30 days without any deduction whatsoever each time after receipt of the goods and receipt of the complete or completed invoice by post. If invoices are received prior to the goods, payment terms will start after complete receipt of the goods.
3. Agreed upon payments prior to receipt of the delivery, especially down payments and advance payments, shall only be payable after providing security of the prepayment risk by an absolute, unlimited bank guaranty, without charges for us, in the amount of the prepayment.
4. A deduction of discount is also possible, if we make a setoff, or make justified retentions.
5. We are entitled to make all payments in check and bill transactions.
6. Our payments will always be made under the proviso of correction or reclaim, if subsequently an incorrect calculation or objections occur, as well as under the prerequisite of an orderly receipt of the goods. Payments are not considered as acceptance of the delivery.
7. A possible exchange risk shall be at the expense of the supplier.
8. Day of payment shall be day of performance.
9. Charges for transfer of payment to the supplier, especially bank charges, shall be at the expense of the supplier.
10. We do not agree to maturity or default interest which are higher than the interest owed due to statutory provisions.

## § 6 Shipment

1. We have to be notified of shipment at the latest when the goods have left your works. In the shipping advices, bills of lading and package addresses our shipping address and our purchase order number must be indicated.
2. The supplier must see to it at its own expense that the shipment risk is entirely covered by an insurance.
3. If no delivery note by the supplier is attached to the delivery, we shall be entitled to return the goods at the expense of the supplier.

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4. The delivery object must be properly packed. The packing must meet all technical, statutory and administrative provisions and our packing requirements.

## **§ 7 Incoming Goods' Inspection and Notification of Defects**

1. Deliveries with larger piece numbers of the same parts, especially smaller vendor parts, are inspected by us in statistical sampling. The supplier waives all possible objections that the inspection duty pursuant to § 377 HGB [German Commercial Code] is not complied with by this. If the spot checks result in defective parts, we shall be entitled upon our option to reject the entire delivery without any further inspection or to carry out another inspection. The supplier shall bear all cost of another inspection.
2. In so far as goods are not supplied to us but upon agreement directly to a processing company mandated by us, § 377 HGB [German Commercial Code] does not apply. We are, however, obliged to inspect the product manufactured by the processing company, when it is received by us. In other requests, para. 1 applies accordingly.
3. Within the scope of current business relations as well as when a delivery object has been first inspected, tested and released by us, the supplier must inform us about every product change unasked and in writing. In cases of a current delivery or a delivery after product release, the supplier is moreover obliged to inspect the delivery object for all deviations and modifications during each and any modification of the manufacturing conditions in its factory, especially if tools, machines are replaced, or if new manufacturing procedures are introduced, and to inform us in writing on such deviations or modifications. If supplier omits such a notification in the above mentioned cases, § 377 HGB [German Commercial Code] is not applicable, even if the modified nature of the delivery object leads to a defect.
4. The supplier shall be obliged to inspect the goods prior to delivery as to whether they correspond to the specifications mentioned and whether they are free from defects. In so far as goods are delivered to outgoing goods' inspection by infringing this obligation, the supplier cannot rely on § 377 HGB [German Commercial Code].
5. A notification of defects within three weeks after receipt of goods by us is always considered to be in time.
6. In the event of a defective delivery, we are entitled to return it by carrier at the expense of supplier. If the goods are returned immediately, the supplier waives the defense out of § 377 HGB [German Commercial Code].
7. We do not agree to clauses in delivery terms and conditions according to which notifications of defects have to be made in a certain form or within a delay fixed in days.

## **§ 8 Quality Standard, Warranty and Indemnification**

1. Upon our request supplier shall be obliged to make available a sample, a test piece and/or data sheets. The nature of the samples or test pieces submitted on request shall be deemed to be the contractually stipulated nature of the matter, unless different contractual agreements exist. The same applies to data in test certificates.
2. For objects which according to their usual application have been used for a building and have caused its defectiveness, the warranty period shall be five (5) years and six (6) months.
3. The warranty period for delivery of moveable items is three (3) years unless the statutory provisions of §§ 478, 479 BGB [German Civil Code] apply,
  - (a) if the goods are not provided for immediate processing but as storage goods for stockpiling and the supplier has knowledge of it,
  - (b) for defects which typically cannot be found in a usual incoming goods' inspection and thus only occur due to reclamation by the users, (c) for delivery of technical devices and equipment for which only after a longer operation time according to intended purpose it can be determined whether they are free from defects.
4. Otherwise the warranty period for warranty claims from defects out of the delivery of movable objects shall be two (2) years. A reduction of these warranty periods out of § 8 2. – 4. of the purchase terms and conditions is explicitly contradicted.
5. The warranty period for reworked or resupplied objects and parts will be likewise two (2) years, if these are not movable objects which have been used for a building according to their usual application. In the latter case the warranty period shall be five (5) years and six (6) months.
6. We contradict the restriction of our statutory warranty rights and claims. With respect to purchase contracts we can immediately upon our option either with draw from contract or request abatement or replacement delivery without first being referred to rework. We are, however, also entitled to request rework by the supplier.
7. We do not agree to a limitation of our statutory damage claims, especially from tortuous act, positive contract infringement, fault in contract negotiations, including consequential damages of the defect, neither regarding the fault standard nor regarding scope or amount of liability.
8. Warranty of the supplier includes also the parts supplied by its sub-suppliers. The supplier shall not be entitled to assign its claims against the sub-supplier to us and make its own warranty claim dependent upon the fact that our proceeding against the sub-supplier has been unsuccessful.
9. If a defect occurs within the warranty period, we can request also all cost incurred by us due to rework and redelivery as well as withdrawal from contract, especially reimbursement of possible disassembly and assembly cost as well as transport cost, independent of whether the delivery object was shipped to another location than the delivery location.

10. We are entitled to rectify the defect ourselves at the supplier's expense, without prejudice to our other claims if the supplier is overdue.

## **§ 9 Product Liability, Exemption from Liability, Liability Insurance Coverage**

1. In so far as the supplier is responsible for a product damage – be it out of § 823 BGB [German Civil Code] or out of the liability for defective products law – and apart from us is liable in external relationship as a joint and several debtor, he shall be obliged to hold us harmless against damage claims by third parties on first demand, if the cause was located in his area of control and organization. In so far as the relevant cause is within the area of supplier, he must release us entirely.
2. Within the scope of its liability for damage in accordance with para. 1, the supplier is also entitled to refund any expenditure acc. to §§ 683, 670 BGB [German Civil Code] or §§ 830, 840, 426 BGB [German Civil Code] arising from or in connection with a recall campaign that we are carrying out. As far as possible and reasonable we will inform the supplier with respect to content and scope of the recall campaign and give it the opportunity to comment on the matter. Other statutory rights shall remain unaffected.
3. The supplier undertakes to arrange product liability insurance providing coverage of EUR 5 m per claim (personal injury and/or damage to property); if we are entitled to make further claims for compensation in damage, these shall remain in effect notwithstanding. The insurance policy shall be demonstrated on request by the prime contractor.
4. The supplier must also provide information on the risks of its product in the event of an application which is not made according to the intended purpose.
5. In accordance with the degree of its responsibility the supplier is also obliged to reimburse all expenditure resulting for us from or in connection with a recall campaign carried out by us. As far as possible and reasonable we will inform the supplier with respect to content and scope of the recall campaign and give him the opportunity to comment on the matter.

## **§ 10 Lien, Setoff, Assignment**

1. In case of defective delivery or performance we shall be entitled to withhold payment in full.
2. Assignment of claims against us shall only be valid with our written approval or authorization.
3. We reserve the right to set off all claims to which we are entitled from own rights or rights assigned against payment claims by the supplier independent of maturity.
4. We do not agree to restriction of our statutory setoff possibilities and liens.

## **§ 11 Proprietary Rights**

1. The supplier is answerable for the fact that in connection with its delivery no absolute third party rights, in particular patent and proprietary rights, are infringed.
2. If a third party claim is put forward against us for such an infringement of rights, the supplier shall be obliged to hold us harmless against such claims on first written demand. Any and all expenditure incurred by us from or in connection with the third party claim have to be reimbursed. Enforcement of further rights remains reserved.
3. We do not agree to a restriction of statutory rights to which we are entitled, if a defective title exists.
4. The period of limitation is ten (10) years, calculated from the transfer of risk, however the statutory period of limitation applies as a minimum requirement.

## **§ 12 Tools**

1. We reserve ownership in the tools. The supplier shall be obliged to use the tools solely for the goods ordered by us. The supplier shall be obliged to insure the tools owned by us at original value against fire, water and theft at its expense.
2. The contracting parties agree already now that ownership in all tools, which are manufactured by the supplier or caused to be manufactured by the supplier on behalf of us, will be transferred to us, in so far as we reimburse the tool cost to the supplier according to agreement. In so far as we participate in the tool cost only partially, the supplier grants to us already now a joint ownership interest in the amount of this portion. Free custody of the tools for us by the supplier is stipulated already now.
3. In so far as we participate in the tool cost only partially, the supplier must prove the manufacturing cost of the tool to us. Administrative cost or overhead extra charges of the supplier remain unconsidered.
4. In so far as we reimburse tool cost to the supplier according to agreement, the tools will pass into our exclusive ownership, if prior to contract conclusion the supplier has not explicitly pointed out to the fact that it is only a pro rata charge of tool cost.
5. Tools, the cost of which have been reimbursed by us wholly or in part, must be stored by the supplier for us free of charge for a term of three (3) years after termination of the last delivery. After expiration of the storage period, the supplier shall offer take-over of the tools by us, in so far as he does not intend to store them any longer. By no means the supplier shall be entitled to give up possession of the tools, to sell them or scrap them without our prior approval.
6. § 13 para. 3 and 4 shall apply accordingly for tools.

## **§ 13 Retention of Title, Proprietary Rights, Confidentiality**

1. The supplier shall be entitled to supply the goods under simple retention of title up to their payment. We do not agree to further retention of title

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- stipulations, including but not limited to so-called extended or prolonged retentions of title or consolidated retentions.
2. The contracting parties agree already now that when our property is processed or connected with objects not owned by us, we are entitled to a joint ownership portion in the new product created in the ratio of the value of our property to the other goods processed. The same applies, if objects or goods are supplied directly to the supplier by third parties for processing by our order and for our account. When determining our joint ownership portion, manufacturing cost, overhead expenses and other calculable cost will not be taken into account. A custody free of charge of these objects for us by the supplier is stipulated already now.
  3. The documents handed over to the supplier for production of the delivery object remain our property. We reserve all copyrights. Without our explicit prior written approval these documents must not be used for other purposes than for the production of the delivery object, nor must they be reproduced or made accessible to third parties. After performance of the delivery or on request they have to be returned to us immediately in their entirety including all copies made. The same applies to drawings and documents made by the supplier for us in accordance with the data given by us. The contracting parties agree already now that the ownership in these documents will pass onto us and that the documents will be held in custody for us by the supplier.
  4. The supplier shall be liable for all damages incurred by us as a result of infringement of one of the above mentioned obligations. In so far as the supplier makes accessible to third parties (e.g. sub-suppliers) goods, tools or documents with our approval, the above mentioned obligations must likewise be imposed on them.

## § 14 Final Provision

1. The supplier is informed and agrees that all data concerning the supplier, also personal data, will be stored within the scope of our electronic data processing pursuant to the data protection law in so far as this is necessary within the scope of the business relationship.
2. Solely the law of the Federal Republic of Germany shall be applicable; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
3. Place of performance, also for our payments, is Wuppertal.
4. The court of jurisdiction for all disputes arising from this contract is, providing the supplier is a merchant, legal person subject to public law or special public law fund, Wuppertal or, if the matter falls under the responsibility of the regional court, Wuppertal.

## § 15 In acc. with Art. 13 of the GDPR (General Data Protection Regulation) we provide the following information:

1. Party responsible:  
BKS GmbH  
Heidestraße 71  
42549 Velbert/Germany  
Phone +49 2051 201-0  
Fax +49 2051 201-9733  
E-Mail: info@bks.de
2. Contact details of the Data Protection Officer:  
Our external data protection officer will provide you with information on the subject of data protection under the following contact details:  
datenschutz süd GmbH  
Wörthstraße 15  
97082 Würzburg/Germany  
Web: www.datenschutz-sued.de  
E-Mail: datenschutz@g-u.de
3. Purpose of processing the personal data: reason and implementation as well as handling and termination of contractual agreement (purchase of goods by GU). We only use information regarding specific contact persons for contact purposes in relation to the contractual agreement or our order.
4. Legal basis for processing: Article 6 Sect. 1 Letter b GDPR; where the person concerned is a contact person acting on behalf of a legal entity, Article 6 Sect. 1 Letter f GDPR.
5. Recipients or categories of recipients of personal data: the data of the supplier or the supplier's employees is only processed and forwarded to data processing companies by BKS employees in the relevant departments. In doing so we comply with the requirements of Article 28 of the GDPR. The data is not disclosed to any other external third parties.
6. Time for which the personal data is saved or, if this is not possible, the criteria for defining this duration: we save the data for the duration of the obligatory retention periods stipulated by commercial and fiscal law.
7. If the relevant person is a contact person acting on behalf of legal entities: the legitimate interests we pursue are processing of the contractual relationship between the supplier and us and direct communication with the person responsible internally (Art. 6 para. 1 lit f DSGVO).
8. Provision of the personal data is not a legal or contractual requirement nor is it required for the purpose of contract conclusion. There is no obligation to make the personal data available. Failure to provide the personal data may mean that a contractual relationship cannot be established, carried out or settled.
9. Automated decision-making does not take place.
10. The relevant person is entitled to information from the party responsible about the personal data relevant to this person and also to amendment or deletion or restrictions in relation to processing of this data. We also point out the right to data transferability. This means that every person concerned has the right to receive the personal data relevant to them in a structured, well-established machine-readable format and that persons

concerned have the right to transfer this data to another responsible party without any obstruction on our part.

Contact persons with the supplier have the right, due to their specific situation, to object to the processing of the personal data relevant to them pursuant to Article 6 Section 1 Letter f. The party responsible no longer processes the personal data, unless it can provide compelling legitimate reasons for processing, that outweigh the rights and freedoms of the relevant person, or if the purpose of processing is to assert, exercise or defend legal claims.

11. The persons concerned have the right to complain to the data protection authorities.

The relevant regulating authority for data protection is:

The state representative for data protection and freedom of information in Nordrhein-Westfalen  
PO Box 20 04 44, 40102 Düsseldorf/Germany  
Kavalleriestraße 2-4, 40213 Düsseldorf/Germany  
Phone: +49 211 384 24 – 0  
Fax: +49 211 384 24 – 10  
E-Mail: poststelle@ldi.nrw.de  
Internet: www.ldi.nrw.de