

General Terms of Purchase of

Büter Group*

Version: 16 June 2020

Article 1

General – Scope of application – Conclusion of contract – Amendments

- (1) *These Terms of Purchase (hereinafter ‘**Terms of Purchase**’) simultaneously apply for the group companies
 - Büter Hydraulics Beheer B.V.
 - Büter Maschinenfabrik GmbH
 - Büter Hydraulics B.V.
 - Büter Hebetechnik GmbH(jointly and individually ‘**Büter Group**’).
- (2) Our Terms of Purchase apply to all offers, deliveries and services by our suppliers, exclusively to Büter Group; we do not acknowledge general terms and conditions of the supplier that conflict with, supplement, or deviate from our Terms of Purchase, unless we have explicitly consented to their applicability in writing. Our Terms of Purchase also apply if we accept or pay for the delivery from the Supplier without reservation, in the knowledge of terms and conditions of the Supplier that conflict with, or deviate from our Terms of Purchase.
- (3) All agreements (e.g. orders, transactions concluded, call-offs) reached between us and the Supplier for the performance of a contract must be written down in such a contract. In order to be valid, verbal agreements before or after the conclusion of a contract must be in writing, as must the waiver of this written form clause. Orders and call-offs may also be submitted by remote data transmission and/or fax.
- (4) Our Terms of Purchase only apply in respect of entrepreneurs, legal persons under public law or special funds under public law, pursuant to Section 310(1) German Civil Code (BGB).
- (5) Our Terms of Purchase also apply - in their latest, notified version - to all future transactions with the Supplier, even if they are not the subject of a further separate agreement or Büter Group does not refer to them anew in each individual case.

Article 2

Offer - Offer documents

- (1) The Supplier is obliged to accept our order within 2 weeks of receipt of same, otherwise no effective contractual relationship shall be established between Büter Group and the Supplier.
- (2) Cost estimates from our Suppliers are always binding and not remunerated, unless expressly agreed otherwise in writing.
- (3) We reserve property rights and copyrights to illustrations, drawings, calculations, plans and other technical and commercial documents; they may not be made available to third parties without our express, written permission. They must be used exclusively for production on the basis of our order; once the order has been completed, they must be returned to us unprompted. They must be kept secret from third parties; the provisions of Article 11(4) also apply.

Article 3

Prices – Payment terms

- (1) The details shown on the order, including the price, delivery and transport ‘free domicile’, are binding. The return of packaging must be specifically agreed in writing.
- (2) Statutory VAT is included in the price.
- (3) We can only process invoices if – in line with the stipulations in our order – they mention the order number shown on the order; the Supplier is responsible for all consequences of failure to fulfil this requirement, unless it proves that it is not responsible.
- (4) Unless otherwise agreed in writing, we pay the purchase price within 14 days of delivery and receipt of invoice with a 3% prompt payment discount, or net within 30 days of invoice receipt. Payment is made subject to a review of the invoice by Bütter Group.
- (5) We have the right of set-off and to retain payments to the full extent allowed by law.
- (6) The Supplier is not entitled to assign claims from the contractual relationship to third parties without our prior written consent. This does not apply to a claim for money.
- (7) The Supplier only has the right of set-off and to retain payments if its counterclaim is not disputed by us, or has already been established by law.
- (8) In the case of late payment, we shall owe default interest of 5% points above the base rate, in accordance with Section 247 German Civil Code.
- (9) The goods must be packaged in a manner that prevents damage in transit. Packaging materials must be environmentally friendly and used only to the extent necessary. The Supplier is responsible for properly disposing of the packaging material, at its expense; the take-back obligation for packaging material is also based on the relevant legal provisions.

Article 4

Delivery lead time

- (1) The delivery lead times indicated in the order (delivery terms or delivery dates) are binding.
- (2) Normally, goods are only accepted at Bütter Group Monday to Thursday between 8 a.m. and 3 p.m., and at other times or on Fridays by prior arrangement only.
- (3) The Supplier is obliged to inform us at once in writing if circumstances transpire or it becomes aware of circumstances that result in it being unable to meet the stipulated delivery lead times or dates. If possible, the duration of the delay must also be indicated. Early deliveries are not permitted unless agreed beforehand.
- (4) In the event of late delivery, we may avail ourselves of all the legal remedies. In particular, upon the fruitless expiry of a reasonable grace period, we shall be entitled to demand compensation in lieu of performance and to withdraw from the contract. If we demand compensation, the Supplier shall have the right to prove that it is not responsible for the breach of duty.
- (5) In the event of late delivery, we are entitled to demand a contractual penalty of 1% of the net delivery value per full calendar week, up to a total not exceeding 5% of the net delivery value. We are entitled to assert a contractual penalty in addition to our claim for performance; we undertake to inform the Supplier of our right to demand a contractual penalty within 10 working days following the date of receipt of the delayed delivery. We reserve the right to prove that we have incurred higher losses. The Vendor has the right to prove that no loss, or a significantly smaller loss has been suffered. Further claims and rights are reserved.

Article 5

Transfer of risk – Documents

- (1) Unless otherwise agreed in writing, delivery is to be made free domicile to the location indicated in the order.
- (2) The Supplier is obliged to accurately quote our order number and the contents of the delivery on all shipping documents and delivery notes (item number and quantity); failing this, we cannot be held responsible for delays in processing and payment.
- (3) Transfer of risk is normally after loading and handover of the goods to us at the point of delivery. If, however, the Supplier transports the goods, or engages third parties to transport them, even if we pay the costs of transport, risk shall not be transferred until unloading is complete at the destination (point of delivery of the shipment).
- (4) If acceptance has been agreed, transfer of risk shall be contingent on acceptance. In addition, the statutory provisions on contracts for work and services apply by analogy to acceptance. If we are in default of acceptance, this shall be equivalent to transfer or acceptance.
- (5) Contract variations or partial deliveries are permitted only with our express, prior and written consent.

Article 6

Defect inspection – Liability for defects

- (1) The statutory provisions (Sections 377 and 381 German Commercial Code (HGB)) apply to the commercial inspection and notification requirement, subject to the following conditions: We must inspect the delivered goods within a reasonable period for any quality and quantity discrepancies (e.g. transport damage, wrong delivery and short delivery). Regular random samples suffice. If acceptance has been agreed, there shall be no requirement to inspect the goods. Otherwise, it depends on the extent to which, in each set of circumstances, an inspection is feasible in the ordinary course of business. Our obligation to notify defects discovered at a later date is unaffected. Our notification shall be timely if sent within 7 working days from receipt of the goods or, in the case of hidden defects, from their discovery.
- (2) We are entitled in full to the statutory claims for material defects and defects of title (including wrong and short delivery, as well as improper assembly, deficient assembly, operating or user instructions); in any event, we are entitled to demand from the Supplier, at our discretion, remedial action or the delivery of a new item. The right to compensation, in particular to compensation in lieu of performance, is expressly reserved.
- (3) By derogation from Section 442(1)(2) German Civil Code, we are also entitled to claim for defects without restriction if, due to gross negligence, we were unaware of the defect at the time the contract was concluded.
- (4) We are entitled to remedy the defect ourselves, at the Supplier's expense, if there is a risk inherent in delay or there is particular urgency (e.g. a risk to operational reliability or the imminent risk of unreasonably high losses) and the Supplier does not fulfil its supplementary performance obligation within a reasonable period of grace.
- (5) The limitation period for our claims and rights on account of defects affecting deliveries/performance, on whatever legal ground, is 4 years. This period also applies if the claims are not connected with a defect. Longer statutory limitation periods are unaffected, as are regulations on the start of the period of limitations, suspension of the period, stay and recommencement of the period.

Article 7

Procurement

- (1) Unless otherwise agreed in individual cases (e.g. restriction to in-stock items), the Supplier vouches without limitation for the procurement of the necessary subcontracted deliveries/services, including in the absence of fault (full assumption of the procurement risk).
- (2) In any event, including in the absence of fault, the Supplier must vouch for the subcontracted deliveries and services it procures, as if they were its own deliveries or services. This applies in particular to material defects and legal defects.

Article 8

Product liability – Indemnity – Third-party liability insurance

- (1) If the Supplier is liable for product damage, it is obliged to indemnify us against compensation claims by third parties upon first written request, to the extent that the reason lies within its range of command and organisation and it is held liable itself in relation to third parties.
- (2) The Supplier indemnifies us against all claims by our customers/buyers that the latter assert on the grounds of advertising statements by the Supplier, a sub-supplier of the Supplier (manufacturer pursuant to Section 4(1) or (2) of the German Product Liability Act) or an auxiliary of one of the aforementioned, and which would not exist, or at least not in such form or amount, in the absence of the advertising statement. The provision applies irrespective of whether the advertising statement was made before or after the conclusion of our contract with the Supplier.
- (3) In the context of its liability for cases of damage pursuant to paragraph (1), the Supplier is also obliged to reimburse any expenditure in accordance with Sections 683, 670 German Civil Code and in accordance with Sections 830, 840, 426 German Civil Code arising from or in connection with a recall campaign undertaken by us. We will inform the Supplier, to the extent feasible and reasonable, about the content and scope of the recall measures to be taken, and allow the Supplier the opportunity to comment. Other legal claims are unaffected.
- (4) The Supplier undertakes to conclude and maintain product liability insurance providing lump sum cover of EUR 10 million per personal injury/property damage claim; if we are entitled to further damages, these shall be unaffected. The Supplier will send us a copy of the product liability policy on request.
- (5) The respective contractual partner is obliged to undertake state-of-the-art quality assurance of an appropriate form and scope, and to demonstrate this to us on request.

Article 9

Rights of third parties

- (1) The Supplier guarantees that the delivered item is free of third-party rights, in particular property rights and copyrights, reservations of title, liens and other encumbrances. The Supplier will inform Büter Group at once in writing if claims are asserted against it on account of an infringement of such rights.
- (2) If claims are asserted against us by a third party due to such infringement, the Supplier shall be obliged to indemnify us against such claims upon first written request; we are not entitled, without the Supplier's prior consent, to reach agreements of any kind with the third party, in particular to reach a settlement.
- (3) The Supplier's indemnity obligation applies to all expenses incurred by us as a result of, or in connection with a third-party claim.

- (4) The limitation period is 5 years from conclusion of the contract.

Article 10

Force majeure or similar

- (1) Force majeure, industrial disputes, operational interruptions that are not the fault of the operator, disturbances, official measures and other unavoidable events exempt the contractual partners, for the duration of the disruption and commensurate with their impact, from their respective performance obligations. The contractual partners are obliged to make all reasonable efforts to immediately provide the necessary information and to adapt their obligations to the changed circumstances, in good faith.
- (2) Should the Supplier be unable to deliver on time due to force majeure and other unavoidable events pursuant to Section 10(1) of these Terms of Purchase, Büter Group shall be entitled, without prejudice to its other rights, to wholly or partially withdraw from the contract if the delivery has become unusable for Büter Group as a result of the delay caused by force majeure.

Article 11

Retention of title – Provision of items – Tools – Secrecy

- (1) If we order parts from the Supplier, we reserve ownership of them. Processing or remodelling by the Supplier are undertaken for us. If our reserved goods are processed, mixed or combined with other objects that do not belong to us (further processing), we shall acquire joint ownership of the new item at the ratio of the value of our item (purchase price plus VAT) in relation to the other processed objects at the time of processing.
- (2) If the item provided by us is inseparably mixed with other objects that do not belong to us, we shall acquire joint ownership of the new item at the ratio of the value of the reserved item (purchase price plus VAT) in relation to the other mixed objects at the time of mixing. If the item is mixed in such a way that the Supplier's item must be regarded as the main item, it shall be deemed to have been agreed that the Supplier transfers proportionate joint ownership to us; the Supplier shall safeguard the sole or joint title for us.
- (3) We reserve ownership of tools; the Supplier is obliged to use the tools exclusively for the manufacture of the goods ordered by us. The Supplier is obliged to insure the tools belonging to us at their reinstatement value against fire, water damage and theft, at its own expense. At the same time, the Supplier here and now assigns to us all compensation claims arising from such insurance; we hereby accept the assignment. The Supplier is obliged to perform any necessary maintenance and inspection work and all servicing and repair work to our tools in timely manner, at its expense. It must notify us at once of any incidents; should it culpably fail to do this, compensation claims shall be unaffected.
- (4) The Supplier is obliged to keep all illustrations, drawings, calculations, plans, instructions, product descriptions and other technical and commercial documents and information strictly secret and to use them exclusively for the contractual performance and return them to us after performance of the contract. They may only be disclosed to third parties with our express consent. The duty of secrecy also applies after the performance of this contract; it shall elapse when and insofar as manufacturing knowledge contained in the illustrations, drawings, calculations and other documents supplied has become public knowledge.
- (5) Insofar as the security rights vested in us pursuant to paragraph (1) and/or paragraph (2) exceed the purchase price of all our unpaid goods subject to retention of title by more than 10%, at the Supplier's request we shall be obliged to release the security rights, at our discretion.

Article 12

Applicable law – Jurisdiction – Place of performance – Final provisions

- (1) The relationship between Büter Group and the Supplier are governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of international uniform law, in particular the UN Sales Convention (CISG).
- (2) If the Supplier is a merchant pursuant to the German Commercial Code, a legal entity under public law or a special fund under public law, the sole place of jurisdiction, including in international matters, is Meppen (Germany). However, we are entitled to sue the Supplier at its head office or its branch office.
- (3) Unless otherwise stated on the order, the place of performance is that to which the goods are to be delivered as ordered.
- (4) Should a provision of these Terms of Purchase and additional agreements made be, or become wholly or partially ineffective, this shall not affect the validity of the remaining Terms of Purchase. In such an event, the contracting parties undertake to replace the ineffective provision concerned with an effective provision that most closely reflects the economic purpose of the contract.
- (5) Should the contract or these Terms of Purchase contain loopholes, they shall be filled with such legally effective provisions as the contractual partners would have agreed, in accordance with the economic objectives of the contract and the purpose of these Terms of Purchase, had they been aware of the loopholes.

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