

Conditions of Purchase

I. Order and Confirmation of Order

1. Bodenmüller Hörburger Schrott Antriebstechnik GmbH & Co. KG ("TGSK") may cancel the order if not accepted in writing by the supplier within two weeks after receipt (order confirmation).
2. Any alterations, amendments or additions to the order by the order confirmation shall only become a part of the contract if TGSK accepts such in writing. In particular, TGSK shall be bound by the general terms and conditions of the supplier only to the extent that such are in accordance with these Conditions of Purchase or if TGSK has agreed to such in writing. The acceptance of deliveries or services as well as payments shall not constitute such agreement.
3. Any provisions in other documents provided by the supplier (such as but not limited to specifications, technical data sheets or documentation, advertising material, order confirmation and/or delivery notes) regarding legal terms, liability, restrictions of use, restriction of application and/or restriction of suitability, or any other provision that changes the provisions of these Conditions of Purchase shall not be applicable.

II. Rights of Use

1. The supplier hereby grants TGSK the following non-exclusive, transferable, worldwide and unlimited right,
 - a. to use the deliverables and services including the associated documentation, to integrate them into other products and to distribute them;
 - b. to install, commission, test and operate software and its associated documentation (hereinafter completely referred to as "Software");
 - c. to sublicense the right of use pursuant to clause II.1.b to contracted third parties, distributors and end customers;
 - d. to license to other distributors the right to sublicense the right of use pursuant to clause II.1.b to end customers;
 - e. to use and copy the software for integration into other products or to have it used and copied by contracted third parties or other distributors.
 - f. to distribute, sell, rent out, lease, make available for download or make publicly accessible the software and to copy the software to the extent required for this purpose, always provided that the number of licenses used at any one time does not exceed the number of licenses purchased.
 - g. to sublicense the right of use in accordance with clause II.1.f to contracted third parties and distributors.
2. In addition to the rights granted in clause II.1, TGSK and distribution partners shall be authorized to allow end customers to transfer the respective licenses.
3. Any sublicenses granted by TGSK shall contain adequate protection for the supplier's intellectual property in the software by using the same contractual provisions used by TGSK to protect its own intellectual property rights.
4. The supplier shall inform TGSK, at the latest with the confirmation of order, whether its deliveries contain open source components. In the context of this provision "open source components" are software, hardware or other information which is provided to any user free of license charges with the right to modify and/or distribute based on the corresponding license. Should the deliveries by the supplier contain open source components, the supplier shall comply with all applicable open source license terms and grant TGSK all those rights and provide all information which TGSK requires to comply with these license terms. In particular, the supplier shall provide TGSK with the following immediately after the confirmation of order:
 - a. A schedule of all open source components used, indicating the applicable license, its version and including a copy of the complete text of such license and including a reference to copyright and/or authorship with an understandable structure and table of contents, as well as
 - b. the complete source code of the relevant open source software used, including scripts and information regarding its generating environment, if required by the applicable source conditions.
5. The supplier shall inform TGSK, at the latest with the order confirmation, in writing, whether any open source license used by the supplier is subject to a copyleft effect which may affect the products of TGSK when used as intended. This is the case if license conditions of the open source components used by the supplier require that products of TGSK, or products derived from these, may only be further distributed in accordance with terms of the open source license, e.g. with disclosure of the source code. If this is the case, TGSK shall be entitled to cancel the order within two weeks after receipt of the complete information.

III. Term and Penalty for Breach

1. The timeliness of deliveries shall be determined by the date of receipt at the place of destination/delivery designated by TGSK in accordance with Incoterms ® 2020; the timeliness of deliveries involving installation, commissioning or rectification services, the relevant point in time shall be the acceptance by TGSK.
2. If any delay in delivery, performance or rectification is anticipated, TGSK shall be notified immediately and its decision shall be obtained.
3. If the supplier is in delay, TGSK shall be entitled to charge a penalty in respect of each commenced week of delay amounting 1.0 % (one percent) but not exceeding 5.0 % (five percent) of the total value of the contract.
If the appropriate reservation of rights is not made when at the time of acceptance of delivery, services or rectification, the contractual penalty may still be claimed if the reservation of rights is declared within three months after the actual performance of the service.

4. Additional or other statutory rights remain unaffected hereby.

IV. Transfer of Risk, Dispatch, Place of Performance, Transfer of Title

1. For deliveries involving installation, commissioning or services, the transfer of risk shall occur on acceptance and in case of deliveries without installation or commissioning, upon receipt by TGSK at the named place of destination/delivery, in accordance with Incoterms ® 2020. Unless otherwise agreed, DDP (named place of destination) Incoterms ® 2020 shall apply, if

- a. the suppliers registered office and the named place of destination are within the same country or if
- b. the suppliers registered office and the named place of destination are both within the European Union.

If neither of the aforementioned conditions are fulfilled, then DAP (named place of destination) Incoterms ® 2020 shall apply, unless otherwise agreed.

2. Unless otherwise agreed, the costs of packaging in accordance with the requirements shall borne by the supplier. In case that the transportation costs are borne by TGSK, readiness for dispatch shall be notified immediately with the information in accordance with clause IV.3 hereunder. Transport shall be arranged by the supplier at the lowest possible cost, insofar as TGSK has not requested a specific method of transport or the conclusion of the transport contract for carriage by TGSK. Any additional costs arising from non-conformity with the transport requirements shall be borne by the supplier. If DAP/DDP (named place of destination) Incoterms ® 2020 is agreed, TGSK may also determine the method of transportation. Any additional costs for expedited delivery required to meet a delivery date shall be borne by the supplier.

3. Each delivery shall include a packing note or delivery note stating the contents as well as the complete order number.

4. As far as the parties agree that the supplier commissions the transport of deliveries containing dangerous goods for the account of TGSK, the supplier shall be responsible to provide the necessary legally required dangerous goods data to the freight forwarder nominated by TGSK when placing the transport order. The supplier shall in these cases also be responsible for the packaging, labelling, marking etc. to the mode(s) of transport used in conformity with the relevant regulations.

5. If TGSK informs the supplier that further to the initial transport another transport with a different mode of transport is scheduled, the supplier shall also follow the required legal dangerous goods regulations with regard to such ongoing transport.

6. Transfer of title shall be upon delivery or acceptance by the customer, as the case may be.

V. Payment, Invoices

1. Payments shall be due and payable within 30 (thirty) days net, unless otherwise agreed. In the event of payment within 14 (fourteen) days, TGSK shall be entitled to a deduction of 3% (three percent) discount. The payment period shall commence as soon as any delivery or service has been completed and a correctly issued invoice has been received.

2. Invoices shall state the order number as well as the numbers of each individual item. Invoices are not payable if any such details are omitted. Invoice copies shall be marked as duplicates.

3. Insofar as the supplier is required to provide material test records or certificates, test reports, quality control documents or any other documentation, such shall be part of the completeness of the delivery or service. A discount deduction shall also be permissible if TGSK sets off or withholds any payments to an reasonable extend due to any deficiency.

4. Payments do not constitute an acknowledgment that the corresponding delivery or service are being in accordance with the contract.

VI. Inspection upon Receipt

1. TGSK shall immediately upon receipt at the named place of destination examine whether the delivery corresponds to the ordered quantity and type of products and whether there are any external recognizable transportation damages or other obvious deficiencies.

2. If TGSK discovers any deficiency during these inspections or anytime later, it shall inform the supplier of such deficiency.

3. Complaints can be raised within one month after delivery of a product or performance and, if the deficiency is not discovered until commissioning, processing, or first use, after their detection.

4. TGSK shall not be obliged to carry out any further inspections and notifications vis-à-vis the supplier other than those mentioned above.

VII. Warranty

1. If deficiencies are discovered before or during the transfer of risk or occur during the warranty period specified in clauses VII.8 and VII.9, the supplier shall, at its own expense and at the discretion of TGSK, either repair the deficiency or provide a new delivery or performance (=rectification). This shall also apply to deliveries subject to the inspection limited to sample tests. The discretion of TGSK shall be exercised fairly and reasonably.

2. Should the supplier fail to rectify any deficiency within a reasonable period of time set by TGSK, TGSK shall be entitled to,

- a. cancel the contract in whole or in part without compensation or
- b. demand a reduction of the price or
- c. carry out rectification or new delivery itself or arrange for such to be done at the supplier's expense and
- d. claim damages in lieu of performance.

For the purposes of establishing the timeliness of rectification, the relevant point in time is the date of receipt at the place of destination.

3. The rights mentioned in clause VII.2 may be exercised without setting a deadline if TGSK has a strong particular interest in immediate rectification in order to avoid any liability of its own for delay or for other reasons of urgency and a request to the supplier to rectify within a reasonable period of time is not reasonable for TGSK. The legal provisions on the dispensability of setting a deadline remain unaffected hereby.
4. The above-mentioned rights shall expire one year after the date of notification of the deficiency but in no instance before the expiry of the warranty periods specified in this section VII.
5. Further or other statutory rights shall remain unaffected hereby.
6. Insofar as the supplier provides subsequent performance or repairs, the warranty periods specified in clauses VII.8 and VII.9 shall start to run once again.
7. Irrespective of the transfer of risk regarding delivery, the supplier shall bear the costs and risk related to the rectification (e.g. return costs, costs of transport, costs of installation and removal).
8. The warranty period for deficiencies of material is three years, as far as no statutory provisions provide longer periods.
9. The warranty period for deficiencies in title is five years, as far as no statutory provisions provide longer periods.
10. The warranty period shall begin to run for deliveries without installation and commissioning with receipt at the destination named by TGSK. For deliveries with installation, commissioning or services the warranty period shall begin to run with their acceptance. In the case of deliveries to locations where TGSK is operating outside its premises, the warranty period shall begin with the acceptance by the client of TGSK, at the latest one year after the transfer of risk.

VIII. Inspection and notification obligations of the supplier

1. The supplier shall be obliged to examine components provided by TGSK or provided by its suppliers, manufacturers and other third parties at the time of receipt of such components to check for obvious and hidden defects. In case any defects are discovered in the course of such inspections, the supplier shall immediately inform its suppliers or, in the case the components are provided by TGSK, inform TGSK.
2. The delivery of products free any third-party rights is essential for TGSK. Thus, the supplier is under the duty to verify title and to inform TGSK of any conflicting industrial and intellectual property rights. Any breach of such duty is subject to the regular statutory limitation period.

IX. Quality Management, Subcontracting to Third Parties

1. The Supplier shall maintain a quality management system.
2. Subcontracting to third parties without the prior, written consent of TGSK shall be inadmissible and shall entitle TGSK to cancel the contract in whole or in part as well as to claim damages.

X. Provision of Material, Information

1. Material and information provided by TGSK shall remain the property of TGSK and shall be stored, labeled as the property of TGSK and administered separately free of charge. Their use shall be limited to the orders of TGSK only. In the event of reduction of value or loss, the supplier shall supply replacements, whereby the supplier shall also be responsible for simple negligence. This shall also apply to the charged transfer of order-related material.
2. Any processing or transformation of the material and information shall be carried out for TGSK. TGSK shall immediately become the direct owner of the new or transformed product. If this is impossible for legal reasons, TGSK and the supplier hereby agree that TGSK shall be the owner of the new product at any time during the processing or transformation. The supplier shall store the new item free of charge for TGSK with the care of a merchant.

XI. Tools, Patterns, Samples, Confidentiality

1. Any tools, patterns, samples, models, profiles, drawings, standard specification sheets, printing templates and gauges provided by TGSK or produced for TGSK, as well as any materials derived there from, shall not be passed on to any third party nor used for any other purpose than the contractual purposes except with the written prior consent of TGSK. Such materials shall be secured against unauthorized access or use. Subject to further rights, TGSK may demand the return of such materials if the supplier breaches these obligations.
2. The supplier shall treat knowledge and experience, documents, terms of reference, business processes or other information obtained from or about TGSK, as well as the conclusion of the contract and any results confidential with regard to third parties - even beyond the duration of the contract – for as long as and insofar as such information have not become publicly known by legal means or TGSK has not consented in writing to their transfer in the individual case. The supplier shall use such information exclusively for the purposes required for the provision of the services. The supplier shall make confidential information available only to those employees who require the information for the fulfillment of their duties and shall ensure that such employees are also subject to a duty to treat such information as confidential. Insofar as TGSK has agreed to any subcontracting to a third party, these shall be obliged accordingly in writing.

XII. Assignment of Claims

Any assignment of any claim shall only be allowed with the prior written approval of TGSK.

XIII. Right to Terminate and Cancel

1. In addition to any statutory rights of withdraw from or cancel a contract, TGSK shall be entitled to cancel the contract in whole or in part in case
 - a. the supplier is in delay with its delivery or service and such delay persists for more than two weeks after receipt of the reminder despite a corresponding reminder from TGSK or in case
 - b. TGSK can no longer be expected to adhere to the contract because of a reason attributable to the supplier and taking into account the circumstances of the individual case and the interests of both parties, in particular if a significant deterioration in the financial situation of the supplier occurs or threatens to occur and the fulfilment of a delivery and performance obligation towards TGSK is jeopardized as a result.
2. TGSK shall also be entitled to terminate the contract if insolvency proceedings or comparable proceedings in relation to the assets of the supplier have been applied for or commenced.
3. In the event of termination by TGSK, TGSK may continue to utilize existing facilities, deliveries or services already performed by the supplier in exchange for appropriate remuneration.

XIV. Code of Conduct for Business Partners, Security in the Supply Chain

1. The supplier is obliged to comply with the laws of the applicable jurisdiction(s). In particular, the supplier will not engage, actively or passively, nor directly or indirectly, in any form of bribery, violation of the basic human rights of his employees or any child labor. Moreover, the supplier will also take responsibility for the health and safety of its employees in the workplace and comply with the applicable minimum wage requirements. In compliance with the applicable environmental protection laws, the supplier shall also take appropriate measures to avoid the use of so-called conflict minerals and shall establish transparency over the origin of raw materials. The supplier shall a protected grievance mechanism for its own employees to report possible violations of this Code of Conduct for suppliers, service providers and business partners of the TGSK or its own and will promote and demand compliance with its own Code of Conduct or the Code of Conduct of TGSK among its suppliers to the best of its ability.
2. The supplier shall take the necessary organizational instructions and measures, in particular in the areas of premises security, business partner, personnel and information security, packaging and transport, in order to ensure security in the supply chain. The supplier shall protect the goods and services provided to TGSK or to third parties designated by TGSK against unauthorized access and manipulation. The supplier shall deploy only reliable personnel for such goods and services and shall obligate any sub-suppliers to take equivalent security measures.
3. In addition to other rights and remedies TGSK may have, TGSK may terminate the contract in case of breach of the obligations under clause XIV by the supplier. However, provided that the supplier's breach of contract is capable of remedy, TGSK's right to terminate is subject to the proviso that such breach has not been remedied by the supplier within a reasonable grace period set by TGSK.

XV. Product Conformity, Product Related Environmental Protection with Substance Declaration, Dangerous Goods, Occupational Health and Safety

1. If the supplier delivers products which are subject to statutory and other legal requirements with regard to their placing on the market and further marketing in the European Economic Area or corresponding requirements in other countries of use notified by TGSK to the supplier, then it shall ensure compliance of the products with these requirements at the time of transfer of risk. The supplier shall further ensure that all documents and information required for the proof of conformity of the products with respective requirements can be furnished immediately to TGSK upon request.
2. If the supplier delivers products, whose substances are listed in the so-called "List of Declarable Substances" (www.bomcheck.net/suppliers/restricted-and-declarable-substances-list) applicable at the time of the order or which are subject to statutorily imposed restrictions and/or information obligations (e.g. REACH, RoHS), the supplier shall declare such substances no later than the time of the first delivery of products.
3. If the delivery contains goods which are to be classified as dangerous goods in accordance with the international regulations, the supplier shall inform TGSK hereof in writing at the latest with the date of order confirmation. The requirements regarding dangerous goods in clauses IV.4 and IV.5 remain unaffected.
4. The supplier shall be obliged to comply with all legal and contractual requirements regarding the health and safety of the personnel employed by the supplier. It shall ensure that the health and safety of its personnel as well as indirect sub-suppliers employed to perform the deliveries and services is protected.

XVI. Information Security

1. The supplier shall take appropriate organizational and technical measures to ensure the confidentiality, authenticity, integrity and availability of the supplier operations, as well as products and services. These measures shall be consistent with good industry practice and include an appropriate information security management system.
2. Where products or services include software, firmware or chipsets,
 - a. the supplier shall implement appropriate industry standards, processes and methods to prevent, identify, evaluate and repair any vulnerabilities, malicious code and security incidents in products and services;
 - b. the supplier shall provide repair, update, upgrade and other maintain products and services and provide patches to remedying vulnerabilities for a reasonable lifetime of the products and services;

- c. the supplier shall provide TGSK a bill of materials identifying all third party software components contained in the products. Third party software components shall be up to date at the time of delivery to TGSK;
 - d. TGSK shall be entitled, but not obliged, to test the products at any time, either itself or through third parties, for malicious code and vulnerabilities, in which case the supplier shall adequately support TGSK;
 - e. the supplier shall provide TGSK with a contact for all information security related issues.
3. The supplier shall inform TGSK promptly of all information security incidents occurred or suspected and vulnerabilities discovered in any supplier operations, services and products, if and to the extent TGSK is actually or likely to be materially affected thereby.
 4. The supplier shall take appropriate measures to achieve that its sub-suppliers and suppliers shall be bound by obligations equivalent to the obligations in this clause XVI within a reasonable period of time.
 5. Upon TGSKs request, the supplier shall provide written evidence of its compliance with this clause XVI.

XVII. Export Control and Foreign Trade Data Regulations

1. The supplier shall comply with all applicable national and international export control, customs and foreign trade regulations ("foreign trade regulations"). The supplier shall advise TGSK in writing, within two weeks of receipt of the order and without undue delay in the event of changes, of any information and data required by TGSK for compliance with all foreign trade regulations in the event of export, import and re-export, including without limitation:
 - a. all applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and
 - b. the statistical commodity code according to the current commodity classification of foreign trade statistics and the HS (Harmonised System) code; and
 - c. the country of origin (non-preferential origin) and, upon request of TGSK, supplier declarations of preferential origin (for European suppliers) or preferential certificates (for non-European suppliers).

XVIII. Reservation Clause

TGSK shall not be obligated to fulfill the contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs regulations or any embargoes or other sanctions.

XIX. Mention as Reference Customer

Only upon the prior written approval of TGSK, the supplier shall be allowed to mention TGSK as a reference customer and/or refer to products and services which the supplier has developed for TGSK within the framework of the contractual relationship with TGSK and/or to issue press releases or other public announcements within the framework of the contractual relationship.

XX. Supplementary Provisions

1. Insofar as the provisions of these conditions of purchase do regulate certain matters, the statutory provisions shall apply.
2. If the supplier breaches its obligations under these terms and conditions, in particular under clauses II, III, IV, VII, VIII, XIV, XV, XVI and XVII, it shall be liable for any expenses and/or damages incurred by TGSK as a result, unless the supplier is not responsible for such breach.

XXI. Place of Jurisdiction and Applicable Law

1. German substantive law shall apply, excluding the provisions of the United Nations Law on the Sale of Goods.
2. The relevant court of jurisdiction shall be Kempten.