

## General Terms and Conditions of Purchasing of Brugg Cables Sp. z o.o.

### 1. Scope

These General Terms and Conditions of Purchasing ("T&Cs") apply to all legal transactions (offers, contractual negotiations, contracts) between Brugg Cables Sp. z o.o. ("**BRUGG**"), as purchaser, and its supplier ("**Supplier**"), as seller, regarding the purchase and delivery of items ("**Delivery Items**").

These T&Cs constitute an integral part of the legal relations existing between BRUGG and the Supplier, in particular the purchase and delivery contracts, unless explicitly agreed otherwise. Provisions which deviate from these T&Cs are only legally binding if they are expressly offered by BRUGG or are accepted by BRUGG expressly and in writing.

By accepting an order from BRUGG, the Supplier accepts and indicates its agreement with the fact that the sale and delivery of the Delivery Items will be governed by these T&Cs. Exceptions to this must be in writing. BRUGG reserves the right to amend these T&Cs at any time. Amendments are valid as from the time of notification of the Supplier with respect to all legal relations established thereafter between BRUGG and the Supplier.

Where the Supplier transfers the manufacturing, packaging and/or delivery of the Delivery Items, in whole or in part, to a third party (e.g. sub-supplier, sub-contractor etc.), the Supplier shall be obliged to impose these T&Cs, and in particular the conditions contained therein, upon the third party.

Unless expressly approved by BRUGG, in writing, the Supplier's general terms and conditions and other contractual documents are expressly excluded. This also applies where general Terms and Conditions or other documents of the Supplier have been incorporated into an offer or order confirmation from the Supplier, or have been otherwise communicated to BRUGG.

### 2. Conclusion of Contracts / Form

The Supplier is obliged to confirm orders for Delivery Items within three working days provided such confirmation corresponds to the usual processing method or the applicable agreements.

A contract between BRUGG and the Supplier comes into effect with the agreement of BRUGG. Agreement takes place by way of a written order, written confirmation and/or signature of a written contract.

Declarations in text form which are transmitted or recorded by way of electronic media (email, SMS and such like), are deemed to be written declarations by a party. The sender bears the burden of proving that such declarations have been received and accessed by the recipient. Such declarations are deemed to have been received from the moment that they are accessed.

### 3. Cancellation

After approval has been issued by BRUGG, until arrival of the whole shipment of Delivery Items at the place of performance (see Clause 6), BRUGG shall be entitled to cancel orders subject to its refunding all costs incurred by the Supplier in connection with this order. The right to a refund only exists, however, insofar as the Delivery Items may not be sold or used elsewhere by the Supplier. BRUGG will only refund costs which the Supplier is able to substantiate by way of receipts.

### 4. General Obligations of the Supplier

The Supplier is obliged to manufacture, package and/or deliver the Delivery Items in accordance with the requirements and specifications which it receives from BRUGG. The Supplier can only undertake technical changes to products/specifications with the written approval of BRUGG.

The Supplier is obliged to deliver Delivery Items which are of perfect quality and suitable for the agreed purpose.

The Supplier is obliged and guarantees that it will comply with the applicable statutory provisions of Poland and the European Union when effecting contractual performance.

### 5. Dispatch / Packaging

All shipments of Delivery Items shall contain a delivery note indicating, in particular, the order number, number of items, article numbers, description, delivery date, orderer and sender.

BRUGG is entitled to return the packaging material invoiced by the Supplier to the latter at the same price. The transport costs for the return shipment shall be borne by the Supplier.

The Supplier is obliged to take back the packaging material free of charge where it cannot be disposed of easily as a result of being harmful to the environment.

### 6. Delivery Date / Partial Delivery

Delivery dates are binding. Compliance with the delivery date is determined by the date on which the Delivery Items are delivered to the place of performance (see Clause 7).

BRUGG reserves the right to store shipments which arrive more than 7 days before the agreed delivery date, at the cost of the Supplier, or to return them at the cost of the Supplier.

Where the Supplier fails to effect performance on the contractually agreed delivery date, BRUGG may, after granting a grace period and irrespective of any fault on the part of the Supplier, rescind the contract,

in whole or in part, and claim compensation or uphold the contract and claim compensation in lieu of performance, and this shall be without prejudice to BRUGG's right to insist instead upon continued performance and claim damages for default.

In the event of delayed delivery, the Supplier shall in any case grant BRUGG, for each week of the delay, a reduction of 1% of the agreed contract price excluding VAT, but limited to a maximum of 10%.

Where, in the individual case, a fixed date has been agreed upon, BRUGG may, in the event of a failure to effect delivery on time, rescind the contract, in whole or in part, without granting a grace period and irrespective of any fault on the part of the Supplier, and claim compensation, or uphold the contract and claim compensation in lieu of performance. BRUGG is however entitled to insist on performance of the respective contract, irrespective of any fault on the part of the Supplier, and claim default damages provided the Supplier is notified of this in writing within three days of expiry of the delivery deadline.

BRUGG reserves the right to postpone agreed delivery dates. Notification of postponement of the delivery date must take place no later than 14 days before the agreed delivery date. The Supplier undertakes, in this case, to reserve the shipment for BRUGG for up to six months with no effect on the cost. The provisions on invoicing under Clause 10 shall remain applicable.

The Supplier is not entitled to effect partial delivery without the express approval of BRUGG. In the absence of approval, BRUGG is not obliged to accept delivery.

All additional costs arising as a result of the partial delivery, particularly shipping costs, shall be borne by the Supplier. A partial delivery agreed in the individual case must be indicated as such on the delivery note by the Supplier.

Where, as a result of force majeure - e.g. natural disaster, epidemic, strike and other operational disruption arising through no fault of either party, lasting longer than three weeks - the Supplier is temporarily unable to effect performance, both parties to the contract are entitled to rescind the respective contract, in whole or in part, to the exclusion of claims for compensation, although in the case of the Supplier this only applies provided the latter notified BRUGG in writing of the reason for the delay and its likely duration within one week of force majeure occurring.

## **7. Place of Performance, Benefit and Risk**

Delivery of the Delivery Items shall take place exclusively at the delivery address designated in the purchase order ("Place of Performance") and subject to the delivery conditions referred to therein.

The benefit and risk shall not pass until handover of the Delivery Items to BRUGG at the Place of Performance.

## **8. Documentation of Origin**

In the case of cross-border transactions, the Supplier must provide with the Delivery Items the applicable proof of origin (movement certificate, declaration of origin on the invoice etc.) that is required for preferential import customs clearance in the country of destination. Additionally, with respect to Delivery Items purchased and delivered in Poland the Supplier shall provide a supplier's declaration as proof of origin. Any costs arising in this regard shall be borne by the Supplier.

The Supplier shall be responsible for the accuracy and completeness of the information contained in all proofs of origin. The Supplier is obliged, irrespective of any fault, to compensate BRUGG or BRUGG's customers for all loss (including, but not limited to, all duties, taxes, fees and other additional costs) incurred as a result of the preferential origin not being accepted by the competent authority in the country of destination because proof is lacking or incorrect.

## **9. Prices**

The agreed contractual prices are fixed prices exclusive of VAT which contain all the costs incurred by the Supplier in connection with delivery. This includes, in particular, the cost of transport, insurance and packaging as well as taxes, customs duty and charges relating to the import of the Delivery Items into the country of destination and/or delivery of the Delivery Items.

BRUGG only bears such costs as are expressly designated as being its responsibility in the purchase order.

In the absence of any provision to the contrary in the purchase order, the price is "Delivered Duty Paid" (DDP) Brugg as per Incoterms 2010.

## **10. Invoicing / Payment Conditions / Set-off**

The invoice must indicate the date on which the Delivery Items were dispatched as well as the order number and must be sent separately to BRUGG immediately after the Delivery Items have been dispatched.

Unless otherwise expressly agreed, the agreed price shall be due for payment within 60 days after proper delivery to the Place of Performance and after receipt of the invoice. Compliance with the payment deadline is determined by the date on which BRUGG carries out the payment transaction.

Payment of the invoice shall not constitute confirmation that the delivery is free of defects or that it is complete.

The Supplier is only permitted to set off counter-claims which are undisputed or res judicata. The Supplier shall have no right of retention or other withholding rights.

Where the delivery is defective, BRUGG shall be entitled to withhold payment until proper performance has been carried out.

## 11. Warranty

Where the delivery is defective, BRUGG may, without prejudice to any additional rights and irrespective of any fault on the part of the Supplier, claim subsequent performance (remedy of defects or replacement delivery). Subsequent performance is deemed to have failed after one unsuccessful attempt. Following failure of subsequent performance, BRUGG may, irrespective of any fault on the part of the Supplier, opt either for a price reduction or rescind the respective contract. Where loss is incurred due to the defect, BRUGG shall have the right to claim compensation in every case, irrespective of any fault on the part of the Supplier.

The limitation period for claims arising due to defective delivery shall be five years ("**Warranty Period**") starting on the date of delivery of the Delivery Items to the Place of Performance, unless defects were fraudulently concealed.

BRUGG shall be entitled to claim in respect of defects in the Delivery Items for the entire duration of the Warranty Period. The obligations to effect immediate inspection and complaint are expressly excluded.

In other respects the statutory provisions apply.

## 12. Marketing of Goods Elsewhere / Indemnity / Product Liability

Delivery Items ordered by BRUGG, which have either not been delivered by the Supplier or not been accepted by BRUGG, cannot be marketed elsewhere by the Supplier without the express written approval of BRUGG insofar as these Delivery Items bear the company name "BRUGG" or company slogans or brand names or were intended to be supplied especially and exclusively to BRUGG. This applies mutatis mutandis to any manufacturing surpluses.

Every breach of the foregoing obligation – it being specified that different breaches may not be considered a single occurrence – shall oblige the Supplier to pay a contractual penalty to BRUGG amounting to three times the agreed price for the Delivery Items, but in any case at least EUR 100,000. This shall be without prejudice to BRUGG's right to assert additional claims for compensation irrespective of any fault on the part of the Supplier.

The Supplier is obliged, irrespective of any fault, to indemnify BRUGG against claims for compensation

brought against BRUGG by third parties, e.g. due to a failure to comply with statutory or other generally binding rules, insofar as the cause falls within the Supplier's sphere of control and organizational responsibility. In addition, the Supplier shall indemnify BRUGG, irrespective of fault, against all costs including expenditure in respect of re-calls and the cost of legal proceedings. In other respects the statutory provisions apply.

The Supplier is obliged to take out and maintain product liability insurance with a reasonable minimum amount of cover. BRUGG is entitled to request the Supplier to provide proof of such insurance.

## 13. Rights of Use / Third-party Rights

Where intellectual property rights arise or are acquired by the Supplier, particularly copyrights and other intellectual property rights, in respect of the Delivery Items which are specially and exclusively manufactured, packaged and/or delivered for BRUGG by the Supplier, all rights to use and exploit such intellectual property rights shall pass to BRUGG irrevocably, immediately and exclusively and shall be unrestricted as to content, location and time.

The Supplier is obliged to manufacture, package and/or deliver the Delivery Items unencumbered by third-party rights, in particular copyrights and other third-party intellectual property rights, which impair and/or prevent attainment of the contractually agreed purpose. The Supplier fully indemnifies BRUGG in this regard against all third-party claims, including the cost of litigation, resulting from the breach of intellectual property rights due to BRUGG's use of the Delivery Items manufactured, packaged and/or delivered by the Supplier.

## 14. Confidentiality / References

The Supplier is obliged to treat all legal relationships between BRUGG and the Supplier and all commercial and technical details relating thereto, all findings arising from the collaboration with BRUGG ("**Information**") and all information passed to the Supplier by BRUGG in physical form such as technical documentation, drawings, plans and other materials ("**Documents**") as trade secrets and therefore as absolutely confidential. In particular, the copying of Documents is not permitted.

All Documents and any items provided on loan must be returned by the Supplier immediately upon request by BRUGG, which may be made at any time; and must be returned in any case, without request, no later than the end of the legal relationship. The Supplier shall have no right of retention with regard to the Information and loaned items.

Advertising using BRUGG names and/or brands or other reference details is only permitted with the prior written agreement of BRUGG.

The Supplier is obliged to conclude agreements corresponding to this Clause 14 with its own employees and agents (e.g. sub-suppliers, sub-contractors etc.) or to impose obligations to that effect upon them. The Sup-

plier shall be liable for any failure by the Supplier's employees or agents to comply with the obligations under this Clause 14.

## 15. Social Responsibility, Environmental Protection and Anti-corruption

The Supplier undertakes to comply with the respective statutory rules on dealing with employees, protecting the environment and health and safety at work and to work on reducing the adverse effects of its activities on human beings and the environment. For this purpose, the Supplier shall, where possible, set up and develop a management system in compliance with ISO 14001. In addition, the Supplier shall observe the principles of the UN Global Compact Initiative (<http://www.unglobalcompact.org>) and the ILO's International Labour Standards (<http://www.ilo.org>). These relate principally to the protection of international human rights, the right to collective bargaining, the abolition of child and forced labour, the elimination of discrimination in the field of employment and occupation, environmental responsibility and combating corruption.

In particular, the Supplier shall ensure on behalf of his company that the manufacture or processing of the Delivery Items takes or has taken place without the use of exploitative child labour within the meaning of ILO Convention No. 182 and without violating the obligations arising from the implementation of this Convention or from other applicable national or international provisions on combating exploitative child labour. Further, the Supplier gives its assurance that his company, suppliers and their sub-contractors have taken active and effective measures to exclude exploitative child labour, within the meaning of ILO Convention No. 182, from the manufacture or processing of the Delivery Items. The Supplier shall impose corresponding obligations on his sub-suppliers and their sub-contractors and undertake monitoring measures in this respect. BRUGG is entitled to examine the content of the corresponding agreements. The Supplier shall, upon request by BRUGG, provide proof of the measures it has taken.

The Supplier shall not use any conflict commodities in the manufacture of its Delivery Items. Conflict commodities are, for example, columbite-tantalite (coltan), cassiterite (tin ore), gold, wolframite and their derivatives from the Democratic Republic of Congo and its neighbouring countries, defined in more detail in Article 1502 Section (e) (1) and (4) of the Dodd Frank Acts (USA). The Supplier shall take and implement suitable measures to ban the procurement and use of conflict commodities. In the event that the Supplier uses columbite-tantalite (coltan), cassiterite (tin ore), gold, wolframite and their derivatives in the manufacture of the

Delivery Items, it shall provide BRUGG with proof, on an annual basis, that it has not violated the ban on the use of conflict commodities.

BRUGG has undertaken to implement all transactions without the use of blackmail, bribery or other unlawful, unethical or fraudulent activities. The Supplier undertakes to comply with all applicable law and regulations, particularly the US Foreign Corrupt Practices Act.

In connection with transactions with BRUGG, the Supplier shall not offer, promise, authorize, give, demand or accept any gift, loan, commissions, consideration or other advantage from or to any person as an inducement to commit a dishonest or illegal act or a breach of contract, in order to obtain, keep or procure an order, or to secure any other unfair advantage. Under this provision, unlawful payments therefore include offers, promises and authorizations of payments, whatever the amount, made with the aim of expediting routine administrative tasks. The Supplier is obliged to introduce appropriate procedures for his employees so that they comply with all applicable anti-corruption laws and this provision.

## 16. Severability

Where individual provisions of these T&Cs are considered, by a competent arbitration tribunal, official court of law or competent authority, to be invalid or ineffective, this shall have no effect on the validity of the other provisions or on the T&Cs as a whole. The Parties will endeavour to replace the invalid provision with a valid provision which comes as close as possible to the legal and economic purpose of the invalid one.

## 17. Governing Law and Jurisdiction

All legal relationships between the Supplier and BRUGG shall be governed by substantive Polish law. The Vienna Sales Convention shall not apply.

The exclusive place of jurisdiction shall be the place where BRUGG has its registered office. However, BRUGG shall also be free to apply to the court located in the place where the Supplier has its registered office.

Brugg, 01. July 2015