

### **1. Preface**

The following provisions shall be valid as amended from time to time for the purchase of goods or services, i.e. programming or coating made by BMK. The validity of supplier's General Terms and Conditions of Business and/or Payment shall be excluded. Any provisions deviating from these terms, either orally, in writing or electronically, shall be valid only upon BMK's written consent. This shall also apply if BMK accepts deliveries or services without any reservation in awareness of any contrary terms of the supplier's or any terms deviating from BMK's Terms and Conditions of Purchase. BMK reserves the right to withdraw from the contract, if the contract covers deliveries or services which BMK obtains for further processing or resale to a third party, if the third party suspends his payments or, if he or another permitted person duly applies or initiates insolvency proceedings or any comparable legal proceedings or if the opening of such a proceeding is rejected due to a lack of assets. This right of withdrawal only exists if BMK informs the supplier immediately after becoming aware of such circumstances or if the other party has otherwise acquired knowledge thereof.

### **2. Quotation**

The supplier undertakes to accept in writing an order from BMK within a maximum period of 1 (one) week as of receipt by sending a binding order confirmation. Otherwise BMK shall be released from its quotation. As far as BMK stipulates a certain kind of order confirmation, i.e. a form, it is mandatorily required that the supplier complies therewith.

### **3. Prices – Terms of Payment**

The price stipulated in the order is binding. Any price increases vis-à-vis the prices stipulated in the order require the express prior written consent of BMK's. The acceptance of goods or services shall always be subject to BMK's written consent. § 640 German Civil Code (BGB) is not applicable. The good or service is not accepted until the declaration of acceptance respectively the order of series parts is issued. The price includes delivery "free domicile" DDP BMK works Augsburg INCOTERMS 2010 and packaging, unless stipulated otherwise in writing.

Unless separately agreed, any included packaging is to be taken back by the supplier at his own expense. BMK provides included packaging to the supplier EXW BMK works Augsburg INCOTERMS 2010 for collection.

The supplier executes a permanent cost savings programme with the aim to clearly reduce costs for the goods to be delivered. Any cost savings achieved by the supplier will be taken into account in equal shares in favour of both parties.

The statutory VAT is included in the price, the statutory amount of which will be shown in a separate position on the date of invoice

Invoices may only be processed if these are structured verifiably according to the order specifications and stipulate the order number stated therein. Any additional or reduced output shall be stipulated separately in the respective invoice.

Unless agreed otherwise in writing, BMK shall pay the purchase price within 21 days, calculated as of delivery and receipt of invoice, with 3 % discount or within 30 days after receipt of invoice strictly net. The right to set-off or retain shall be exclusively due to BMK within the limits of statutory regulations. Payment by BMK does not constitute any

acknowledgment of conditions and prices. The payment date does not have any impact on the supplier's liability for defects and BMK's right of objection.

#### **4. Delivery Date – Terms of Delivery**

The delivery time stipulated in the order and confirmed in the order confirmation is binding and shall be guaranteed by the supplier. Supplier's reservation of self-supply is explicitly not accepted. The supplier ensures that he will exclusively supply new, unused goods and shall confirm this separately in writing upon BMK's request. Any services shall be performed professionally at trade-specific prime quality according to BMK's specifications.

The supplier undertakes to promptly inform BMK in writing about any circumstances occurring or coming to his knowledge pursuant to which the stipulated delivery time may not be adhered to. If in such case an accelerated transport of the goods is required for adhering to the stipulated delivery dates, the supplier shall bear the accruing additional expenses for any delays he is accountable for.

In case of supplier's default BMK is entitled to statutory claims. In particular BMK is entitled to withdraw from the contract after the unsuccessful expiry of a reasonable period of grace and to make a covering purchase and to charge to the supplier the additional costs incurred thereby.

In case of supplier's default BMK is entitled, without prejudice to any other statutory claims, to claim for the supplier payment of a contractual penalty amounting to 0.5 % of the order value affected by the default per working day, though no more than 5 % of the total order value. Furthermore BMK may claim for damages, in particular, but not restricted to, additional costs for a replacement purchase (e.g. more expensive goods, other terms of delivery and payment, express costs), by splitting of production lots (e.g. setup costs, subsequent deliveries), by changes in processing (e.g. subsequent manual assembly of otherwise machine-assembled delivery items), by approval processes at BMK or BMK's customers.

The application of section 341 para. 3 BGB (German Civil Code) shall be excluded.

Any forfeited contractual penalties shall be credited against any other claims for damages related to default.

Order marks, reference numbers and further indications requested in conjunction with order processing are to be noted on dispatch advices, delivery notes, bills of lading, invoices and on the exterior packing, etc., as stipulated by BMK and stated in the order.

Deliveries are to be made exclusively to the receiving station as specified by BMK at all times.

The supplier shall be liable for damages and bear the costs accruing due to non-observance of these processing and shipping specifications caused by himself or by the commissioned vicarious agents and sub-contractors. All shipments, which cannot be accepted due to non-observance of these shipping specifications, shall be stored at supplier's cost and risk. In each case BMK is entitled to determine contents and condition of such shipment. BMK further reserves the right to reject not clearly identifiable deliveries at supplier's cost and risk.

Therefore BMK is entitled to reschedule a delivery date by fax or e-mail up to 6 months in the future, if the rescheduled date is at least 10 working days before the originally stipulated delivery date.

The supplier owes the procurement of spare parts for delivery items for the life period as stipulated by BMK or empirically expected by BMK or BMK's customers. As far as BMK's customers should assert any claims against BMK due to this culpable non-observance, the supplier shall release BMK therefrom.

In case of **EndOfLife** or **ProductChangeNotification** information concerning delivery items the supplier is obliged to take suitable measures for ensuring the delivery and shall promptly inform BMK upon receiving the information himself. If the supplier culpably does not or not timely take any suitable measures, he shall indemnify BMK for the occurred damage. For this purpose the supplier must regularly make inquiries at his in-suppliers concerning any

scheduled market withdrawals (EOL), he must inform BMK about possible alternative products and provide the respective data sheets, samples, etc. without further demand. Upon receipt of an EOL information BMK shall receive the option to place a final order to the supplier at the currently valid conditions.

The supplier must provide to BMK timely, without further request and free of charge all documentations required for the use, set-up, assembly, processing, storage, operation, maintenance, inspection, servicing and repairs of the goods.

## **5. Quality Assurance**

As far as BMK does not agree upon a separate quality assurance agreement, the following shall apply:

The supplier holds the sole responsibility for the faultless quality of the goods or services supplied to BMK. Any coordination of quality-assuring measures with BMK does not release the supplier from his responsibility for the product quality. The supplier is committed to the zero-fault-target and shall adhere to this aim by taking suitable measures (e.g. a 100 % final inspection prior to delivery to BMK).

The supplier has a quality management system according to ISO 9001 (currently valid version) or a comparable quality management system and will prove this to BMK. BMK will accordingly monitor the supplier. The supplier warrants that the production and distribution procedures used for manufacturing and distributing the goods are state-of-the-art and comply with all applicable statutory provisions. The same shall apply for services, e.g. programming or coating.

For further assemblies the delivered parts have to be in accordance with the requirements of parts: J-STD002 and J-STD020. The supplier undertakes to provide adequate packing, particularly with regard to ESD (acc. to DIN EN 61340) and MS Level (acc. to J-STD033). The supply of electronic parts must be made in packings suitable for automated processing. For this purpose the requirements are to be complied with: DIN EN 60286-3 for tape and reel goods and DIN EN 60286-5 for tray goods.

The supplier shall use environmentally friendly packaging (e.g. CO<sub>2</sub>-free / low content of CO<sub>2</sub>) in order to achieve the goals of resource conservation, waste avoidance and the entire life cycle assessment. Among other things, packaging should consist entirely or to a large extent of recycled material and/or material from renewable resources. Where possible, the supplier shall use packaging that can be recycled to a large extent (not by means of energy recovery). Under no circumstances shall the supplier use packaging containing cellulose whose raw material comes from tropical rainforests. For packaging containing cellulose, the raw materials shall only come from legal and sustainable forest management or from recycled material. When using films, only transparent polyethylene (PE) films should be used. Polyvinyl chloride (PVC) shall not be used. Reusable systems as packaging shall be preferred by the supplier.

The supplier shall inform BMK in time before a change in any production procedures or materials of the goods occurs, so that BMK may check whether this change may have a negative impact. In turn, the same shall apply for services.

The delivery of products with a date code exceeding twenty-four (24) months is not allowed; otherwise BMK may refuse the acceptance of delivery at the supplier's cost and risk. In differing cases BMK must grant a written exception for the specific items before delivery.

BMK reserves the right to make sampling inspections pursuant to AQL acc. to ISO 2859 or 3951 and is entitled to refuse the entire delivery without compensation, if the admissible error rate is exceeded.

Furthermore, BMK is entitled to refuse the entire delivery without compensation if an error rate of 10 (ten) dpm for catalogue articles or 300 (three hundred) dpm for manufacturing parts is exceeded.

## **6. Passing of Risk – Inspection of Defects - Warranty**

Unless agreed otherwise in writing, the delivery shall be made free domicile.

In line with the delivery control made in the due course of business BMK undertakes to inspect the goods within a reasonable delay with regard to identity, content- and quantity-related accordance between order and delivery as well as obvious and apparently recognisable transport damages. As for the rest, the quality assurance under clause 5 shall apply.

BMK will exclusively inspect the delivered goods with regard to quantity, identity and other variations in quality by means of the supply documentation and the marking on the exterior packing of the goods. Any further obligation to execute a technical delivery control does not exist. Any defects noticed by BMK or BMK's customers during the due course of business shall be indicated to the supplier by BMK. Furthermore the validity of section 377 HGB (German Commercial Code) shall be excluded.

Notifications re faulty performance may be made within 8 working days after passing of risk by BMK, furthermore also after expiry of this period in case of hidden defects within 8 days after coming to attention. The supplier undertakes to remedy any defects at the supplied goods immediately when they have come to his attention, however, at the latest upon receipt of the notice of defects. Initially, the assertion of a defect made by BMK in a notice of defects shall be sufficient.

Notices of defects and problem reports shall be handled via debit notes to the supplier. A set-off or assertion of the right to retain against the supplier's outstanding claims is made at a regular basis. Having received a notice of defects the supplier must present to BMK within a maximum term of 10 working days an 8D report including the cause of defect, investigative measures and suggested action to remedy the defect.

Without prejudice to its statutory warranty claims, BMK is entitled to claim for refund of the internal handling, inspection and sorting charges accrued until complete correction of defects – including the costs for any inspection reports prepared or authorised by BMK in line with the investigation of the defect, unless BMK is demonstrably responsible for the determined defect. Furthermore the supplier must compensate for analysis costs (e.g. grinding and lab costs) and additional test costs (e.g. special or repeat test) in particular, but not exclusively to BMK.

Having given notice of defect, the supplier must inspect the stocks existing at the supplier's and at BMK's. If due to defects repeated or further inspections are required, the supplier shall bear the factual and personnel costs for these inspections; the same shall apply for the material certificate of the semi-finished goods provided by the supplier.

The statutory claims for warranty are due to BMK without restriction. BMK chooses to remedy any defects by way of supplementary performance, either by remedying the defect or by delivering goods free from defects. The related supply documentation shall also be promptly corrected by the supplier, if necessary. After the unsuccessful expiry of an adequate period stipulated for remedying the defects or making a replacement delivery BMK may withdraw from the contract, make a covering purchase or reduce the stipulated remuneration. By all means BMK is entitled to claim compensation for the incurred costs, damages and verified wasted expenditures as well as all expenditures required for the purpose of remedying the defect or making a replacement delivery from the supplier. In particular, this includes additional costs for replacement purchases (e.g. more expensive goods, other terms of delivery and payment, express costs), for splitting of production lots (e.g. setup costs, subsequent deliveries), for changes in processing (e.g. subsequent manual assembly of otherwise machine-assembled delivery items), for approval processes at BMK or BMK's customers. Furthermore costs for the production of tools and test equipment, reworking costs at BMK's or at the customer's (e.g. resoldering, tempering, drilling), additional test costs (e.g. special or repeat test), refunding the value of irreparable end products, assembly and disassembly costs as well as transport and shipping costs and lawyer

fees. As far as regulated by law, these claims shall exist without fixing a deadline. The right to claim damages instead of performance is expressly reserved. The supplier's warranty period is 27 months as of delivery, unless the statutory warranty period is longer.

In case of a notice of defects given by BMK the warranty period shall be extended by the period of time between notice of defects and complete remedy of defects. As far as BMK chooses supplementary performance by means of delivery of goods free from defects, the warranty period shall start anew for the goods affected by the supplier's supplementary performance.

The warranty assumed by the supplier also includes the goods obtained by the supplier's sub-suppliers or upstream suppliers.

BMK's acceptance of the goods does not affect the supplier's warranty for defects or any other warranty. In case of faulty or incomplete deliveries BMK is entitled to retain an appropriate part of the payment for the delivery depending on the determined malperformance, until the respectively owed delivery has been made fully and correctly to BMK. Any further claims of BMK shall remain unaffected.

The aforesaid provisions shall accordingly be valid for services, to the extent to which they may be applicable.

#### **7. Liability – Product Liability – Liability Insurance – Export Control – RoHS Conformity – conflict minerals**

The supplier shall be liable for all personal injuries, property damages and financial losses culpably caused by him, his statutory representative or his vicarious agents while fulfilling his contractual obligations. As far as the supplier is particularly liable in terms of ProdHaftG (German Product Liability Act) or under sections 823 et seqq. BGB (German Civil Code), he must release BMK from any third-party claims upon first demand insofar as the cause lies in his domain and he is liable vis-à-vis third parties or in any other way. In this framework the supplier is furthermore obliged to compensate any verified required expenditures to BMK, which may ensue from or in conjunction with a product recall made by BMK, as far as this product recall is required due to statutory provisions or circumstances, which would induce a diligent businessman to make a product recall in order to avoid any imminent – also non-proprietary – damages. As regards content and extent of the product recall, BMK shall inform the supplier as far as possible and reasonable and give him the opportunity to comment.

For securing any compensation claims the supplier must take out a sufficient public liability insurance and product liability insurance and maintain these until expiry of the warranty period of the last order confirmed by the supplier. This insurance must include an extended product liability insurance (damages due to contact, compounding, processing, subsequent processing as well as assembly and disassembly costs) to an adequate extent, though at least a lump sum of EUR 3,000,000.00 for personal injuries and material damages, and cover the probably increased risk of distribution to the USA, Canada, or else. As far as BMK is entitled to further claims for damages, these shall remain unaffected.

The supplier shall, on his own authority, see to it that the products or parts of same to be supplied by him are not subject to national or national import or export barriers. If a product or parts of same should be subject to such an import or export barrier, the supplier must procure the required import or export licenses for worldwide export via BMK at his own expense. The supplier expressly releases BMK from the liability and responsibility vis-à-vis third parties as regards any violations against import or export barriers for which the supplier is accountable on whatever legal grounds and in case of violation the supplier shall cover all damages accruing to BMK. The same applies to compliance with any sanctions, such as, but not limited to, Regulation (EU) No. 833/2014 and Regulation (EC) No. 765/2006. The supplier shall submit corresponding confirmations to BMK upon request.

If BMK orders RoHS-conform goods, the supplier is responsible for ensuring that the products or part of same to be delivered by him fully comply with all statutory provisions and are suitable for RoHS-conform manufacturing processes.

The supplier expressly releases BMK from the liability and responsibility vis-à-vis third parties as regards any culpable violations against RoHS conformity regulations for which the supplier is accountable on whatever legal grounds; in case of violation the supplier shall cover all damages accruing to BMK. As far as contract products cannot be delivered according to RoHS conformity regulations, BMK reserves the right to withdraw from the respective blanket order or individual order free of charge.

BMK is determined to comply with regulatory and customer requirements regarding the prohibition and restriction of substances, including hazardous substances and conflict minerals. Therefore, the supplier shall ensure that the goods provided to BMK are in compliance with requirements covered under the scope of all relevant regulations. In particular, the Supplier shall adhere to all applicable laws and regulations concerning substances, implement a policy regarding conflict minerals and exercise due diligence to investigate the source of these minerals, ensure a supply free of conflict minerals and respond in a timely manner to BMK's requests for evidence of its compliance with these requirements.

#### **8. Trademark Rights**

BMK reserves any and all proprietary and copyrights as well as patent rights for all copies, drawings, calculations and further documentation provided by BMK to or otherwise received by the supplier in conjunction with the order placed at the supplier's and the contractual supply made by the supplier.

The supplier holds the responsibility that no third-party trademark rights or any other third-party rights are violated in conjunction with his delivery.

If a third party claims against BMK for infringing any third-party trademark rights or any other third-party rights, the supplier undertakes to release BMK upon first demand from these claims on whatever legal grounds. The supplier's release obligation shall include all expenditures necessarily accruing to BMK in conjunction with any third-party claims.

If any third-party rights are opposed to a contract fulfilment vis-à-vis BMK's customers, the supplier may choose either to

- obtain the consent for contractual use from the respective rightholder on supplier's own account or, if this is not possible or merely possible with unreasonable effort or damages,
- change the delivery item in such a way or replace it by another compatible product, which does not violate any third-party rights, yet meets the supplier's obligations under the contract.

If the supplier cannot produce relief by means of one of the aforesaid alternatives, BMK is entitled to reduce the agreed stipulation or to withdraw from the contract and claim for damages instead of performance.

The supplier shall be liable to BMK for all further damages accruing to BMK out of the violation of the obligations stipulated under clause 8 caused by the supplier, his statutory representative or his vicarious agents. The supplier's liability is excluded if and insofar as the rights violation, particularly the violation of third-party trademark rights, results from explicit specifications from the part of BMK's or if the rights violation is caused by a performance provided by BMK.

As the case may be, the supplier has industrial property rights, copyrights, patents, trademarks, utility models, industrial designs and the like, which are relevant for the delivery items. The supplier shall grant to BMK a world-wide, free and non-exclusive right of use for these rights and for the life of the delivery items including the right of assignment

to BMK's customers and their customers, as regards the marketing, assembly, production and use of the delivery items. The supplier undertakes also to oblige his upstream-suppliers to grant the respective right to BMK.

#### **9. Reservation of Title**

Goods supplied to BMK shall become BMK's unlimited property at the latest upon payment in full. As far as BMK consigns parts to the supplier, BMK reserves the unlimited property therein. Processing or transformation by the supplier is exclusively made for BMK. In case of processing BMK acquires the ownership of the semi-manufactured or finished products and thus is deemed manufacturer of same in terms of section 950 BGB. If the retained goods have been processed with other items not belonging to BMK, BMK shall acquire the co-ownership in the new item in proportion of the value of BMK's item to the other processed items at the time of processing.

If the item consigned by BMK is inseparably compounded with other items not belonging to BMK, BMK shall acquire co-ownership of the new item in proportion of the value of the retained item to the other compounded items at the time of compounding. If the compounding is made in such a way that the supplier's item is to be deemed the main item, it shall be considered as agreed that the supplier proportionately assigns co-ownership to BMK; the supplier holds the sole ownership or BMK's co-ownership. As far as the security interests hence due to BMK exceed the purchase price of all retained goods not yet paid and consigned by BMK by more than 10 %, BMK herewith releases the exceeding security interests – offering free choice of several available security interests.

BMK reserves ownership of any consigned tools paid by BMK; the supplier undertakes to use the tools exclusively for manufacturing the goods ordered by BMK.

The supplier undertakes to insure on his own account the tools belonging to BMK at replacement value against fire, water and theft. He undertakes to timely execute any required maintenance and inspection works on his own account. Any failures are to be communicated immediately to BMK; if the supplier culpably fails to do so, any claims for damages shall remain unaffected.

Any machines, appliances, etc. lent to BMK by the supplier shall be insured by BMK against the usual risks. Any further liability for destruction or damaging of the machines, appliances, etc. lent to BMK shall be excluded, unless caused by wilful intent or gross negligence. Furthermore the supplier must at all times store and mark any tools owned by BMK in such a way that a third party may single them out anytime.

#### **10. Non-disclosure**

The supplier undertakes not to disclose any copies, drawings, calculations and further documentation and information, particularly any knowledge re manufacturing, obtained from BMK; these must not be made accessible to any third parties without BMK's prior express written consent.

The supplier is deemed to consider all queries and orders as well as deliveries to BMK following thereupon as trade secret in terms of sections 17 et seqq. UWG (German Act against Unfair Practices) and to treat them confidentially in accordance thereto. The non-disclosure obligation shall be valid for an unlimited period of time also after completion of the orders; it shall expire if and insofar as the knowledge re manufacturing contained in the copies, drawings, calculations and other documents becomes publicly known without there being an infringement of this non-disclosure agreement. The supplier must not use any confidential documents or information for any purpose of his own beyond order execution; upon completion of the order all documents and information have to be returned to BMK immediately, without further request and without keeping any copies to himself. Any promotional indications whatsoever to the business relation existing between BMK and the supplier, particularly the mentioning of referential customers, may only be given with BMK's prior written consent.

The supplier is liable for all damages occurring to BMK due to a culpable infringement of the non-disclosure obligation.

#### **11. Miscellaneous Provisions**

If the supplier is an entrepreneur in terms of section 310 para. 1 BGB, BMK's place of business is the exclusive legal venue, unless another legal venue is mandatory. Nevertheless, BMK is also entitled to bring an action for damages against the supplier before a court of the supplier's domicile.

Unless anything else ensues from the order or this agreement, BMK's place of business shall be place of performance. The place of fulfilment of the supplementary performance is the location of the goods in accordance to the contract. These General Terms and Conditions of Purchase are exclusively subject to the law of the Federal Republic of Germany to the exclusion of the private international law as well as the UN Convention on the International Sale of Goods (CISG). If one or several of the above provisions are or will be ineffective or unfeasible, the effectiveness of the remaining provisions shall not be affected thereof. The ineffective or unfeasible provision shall be replaced by an effective or feasible provision coming closest to the economic purpose of these General Terms and Conditions of Purchase. The supplier may follow up the respective current version under [www.bmk-group.de/agbs](http://www.bmk-group.de/agbs).