

## **General Conditions of Purchase / General Procurement of BILSTEIN GROUP, Hagen / Germany**

**Version 08/2014**

### **I. Application**

1. These General Conditions of Purchase / General Procurement shall apply to all orders for merchandise, services and works as well as to the performance of such orders of BILSTEIN GROUP companies:

- BILSTEIN GmbH & Co. KG
- BILSTEIN INDUSTRIEBETEILIGUNGEN GMBH
- BILSTEIN SERVICE GmbH
- HUGO VOGELSANG GmbH & Co. KG
- HUGO VOGELSANG HANDEL KG
- C. VOGELSANG GmbH & Co. KG
- C. VOGELSANG HANDEL KG

2. In addition to these General Conditions of Purchase / General Procurement further Conditions shall apply according to the applicable type of contract:

- Purchase of goods:

#### **General Conditions for the Purchase of goods**

- Repair works:

#### **General Conditions for repair works**

3. The determination of the order of precedence of the contract documents is subject to the applicable specific General Conditions.

4. Unless otherwise agreed, the aforementioned Conditions shall apply in their current version at the moment of the conclusion of the relevant contract. The current versions are available on <http://www.bilstein-gruppe.de/downloads>

5. Once these General Conditions of Purchase / General Procurement and the applicable specific General Conditions are included in a contract, they also shall apply for any future contract of the same type between the parties.

6. General Conditions of the Supplier diverging from these General Conditions of Purchase / General Procurement shall not apply unless otherwise stipulated within these Conditions or otherwise agreed in the relevant contract with the Supplier. In the event we accept the merchandise or services while not expressly objecting the Conditions of the Supplier, the Supplier may in no case assume our consent with his conditions.

### **II. Purchase offers / Conclusion of contract**

1. Any offer made will be free of charge and not binding to us.

2. In the event the offer is made upon our request, the Supplier shall not diverge

from the specifications provided, unless expressly allowed by us.

3. Unless commercially unacceptable, we prefer energy-saving products. Thus, as far as the supply of energy consuming products is concerned (e.g. production devices, heating facilities, pumps, illumination systems, monitors) Supplier shall offer the most efficient systems and provide for a clearly structured fact sheet setting out the additional costs and the reduction of consumption.

In regard to the erection, change and repair of building premises Supplier shall comply with the provisions of the German Energy Saving Regulation (Energieeinsparverordnung) and the Renewable Energies Heat Act (EEWärmeG), including but not limited to the keeping of legally required certificates (Energy Performance Certificate, Energy Saving Certificate, Certificate according to EEWärmeG). Moreover, Supplier shall propose particularly energy-efficient construction concepts ("efficient building") and accordingly calculate and display the business efficiency of these concepts.

4. Any oral agreement made by our employees shall not become binding for us without our written confirmation. The requirement of written form shall also be met through telefax and e-mail transmission.

### **III. Prices / Invoice**

1. The contract price shall be regarded as a fixed price. It includes all costs and expenses of Supplier related to the fulfilment of his contractual obligations, unless otherwise agreed in the relevant contract.

2. In the event that the price quotation does not specify whether the prices take account of VAT, the price shall be deemed as a gross price.

3. Unless otherwise agreed, costs for shipping, packing and insurance shall be included in the price indicated.

4. All invoices shall contain the corresponding order number and shall be issued to the ordering company according to the German VAT laws applicable. They shall be submitted enclosed with all relevant accounting documentation (e.g. time sheets).

### **IV. Payment**

1. Unless otherwise agreed, payment shall be made either within 14 days with 3 p.c. discount or within 30 days without discount.

2. Payment and discount periods shall begin with the receipt of the invoice, however not before the receipt of the merchandise. In case of services, such periods shall begin only after the performance has been approved by us. In the event the delivery includes documentation (e.g. test certificates) or similar written material, such periods shall begin only after receipt of these documents.

3. Payment shall be made by cheque or by bank remittance. Payment is considered made in time if the cheque has been mailed on the due date or the bank has been instructed to make the remittance on the due date.

4. We shall be liable for interest only if and so far as we are in arrears with payments, not at their mere maturity date. The interest rate shall be 5 percentage points above the Basic Interest Rate. We are, in any case, entitled to establish a lower rate than claimed by Supplier.

5. We shall be entitled to all statutory rights as to the set-off and retention of our claims.

#### **V. Delivery periods / Completion dates**

1. All delivery periods and completion dates agreed shall be binding to Supplier. In the event of imminent delays Supplier shall immediately inform us in writing. Supplier shall further make adequate proposals to remedy the consequences of such delays.

2. Unless otherwise agreed in writing, any delivery or completion date shall be considered to be met upon handing over of the merchandise or notification of completion of the works.

3. If and in so far as Supplier defaults in delivery or completion, we shall be entitled to assert our statutory rights. In particular, we reserve the right to claim damages for non-performance if and in so far as Supplier fails to effect performance after a reasonable grace period set to him has elapsed. Our right to request delivery shall be excluded only if Supplier has compensated us for our damages.

4. Supplier may claim relief for his default for lack of documents to be submitted by us only in the event we have, upon the Supplier's written reminder, failed to submit such documents.

#### **VI. Compliance**

1. Supplier shall take all adequate organisational measures to ensure that none of his employees dealing with us commits any offence against the free competition pursuant to the German Criminal Code (StGB) and the German Law Against Unfair Competition (UWG).

2. Supplier shall fulfil his contractual obligations protecting natural resources to the greatest extent possible. In particular, Supplier shall consider:

- with regard to bought-in material (e.g. packaging material) and their later disposal:
  - Reduction of the use of primary raw materials, reduction of weight, use of recycled materials,
  - Reduction of the variety of materials used,
  - Use of renewable raw materials,
  - Prevention or minimisation of the use of environmentally hazardous substances and additives such as heavy metals,
  - Consideration of the recyclability through adequate choice of material
  - Labelling of the materials used
  - Concepts ensuring easy dismantling.
  
- with regard to bought-in parts and their later disposal:
  - Minimisation of energy and resource consumption
  - Reduction of emissions aiming at “zero emission”
  - Increase of serviceability and reusability through standardisation and easy dismantling of the components
  
  - Increase of the durability through upgradeability, reparability and future viability

Supplier shall only deliver and / or use such systems, facilities, devices and spare parts proven to be suitable for a proper disposal or recycling.

## **VII. Property rights / Confidentiality**

1. All documentation provided by us, e.g. figures, drawings, calculations, models and samples shall not be used but for purpose of the fulfilment of the relevant contract. Such documentation shall be returned to us immediately upon completion of the contractual obligations. It shall not be disclosed to any third party, unless prior written consent by us.

2. Supplier shall treat as a business secret the business relationship to us in general as well as all commercial and technical details (e.g. details pursuant to the foregoing sec. 1). The obligation of confidentiality also applies to any details known during the tendering phase or after execution of the contract. The obligation of confidentiality does not apply if and in so far as information is generally known by the public or Supplier is obliged to deliver it due to an executory title or public instruction.

## **VIII. Force Majeure**

1. If events occur that were unforeseeable and inevitable at the conclusion of the relevant contract, and that hinder the contract performance, the fulfilment of the respective obligation shall be postponed for the period of time of the resulting hindrance plus a reasonable time necessary for adaptation.

2. Force Majeure shall include measures affecting currency, trade policy, strikes, lockouts, operating shutdowns not caused by the party involved (e. g. fire, machinery breakdown, deficiency in energy), obstruction of traffic routes, delay in customs /

import clearance or any similar events.

3. Once the performance hindrance by Force Majeure is terminated, the party hindered from performing notifies the other party in writing, stating a date when the obligations from the relevant contract can be fulfilled. This does not apply in case the performance hindrance is obviously terminated.

4. In case the circumstances of Force Majeure cause a delay in the fulfilment of the contract of more than 6 months, every party shall be entitled to withdraw from the affected contracts.

**IX. Miscellaneous**

1. Supplier is not entitled to transfer any of his rights and obligations deriving from the present contract to any third party, unless prior written consent by us.
2. Unless otherwise agreed to, our business premises shall be the place of performance for all deliveries and services.
3. Our principal office shall be the place of jurisdiction. We may, however, sue Supplier at his place of jurisdiction.
4. All contracts including their conclusion, efficacy, interpretation and execution as well as all other legal relations between the parties shall be governed by the laws of the Federal Republic of Germany supplementing these Conditions, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).
5. Any amendments to the relevant contract, in order to be effective, require written form. The same applies to a waiver of the writing requirement.
6. The ineffectiveness of one or several provisions of the present Conditions or the Conditions referred to in the present Conditions does not affect the effectiveness of the remaining Conditions and the relevant contract.
7. In cases of doubt only the German version of these General Conditions shall prevail.