

# General Terms and Conditions of Purchasing Baumer

Last revised: 10/20/2014

## 1. Scope of Application and Contractual Basis

- a. These General Terms and Conditions of Purchasing ("Purchasing Terms") apply to any and all companies belonging to Baumer Group, especially
  - Baumer Electric AG, CH-Frauenfeld (including operating facilities in Kirchberg)
  - Baumer Hübner GmbH, D-Berlin
  - Baumer IVO GmbH & Co. KG, D-Villingen-Schwenningen
  - Baumer Optronic GmbH, D-Radeberg
  - Baumer Thalheim GmbH & Co. KG, D-Eschwege
  - Baumer Inspection GmbH, D-Konstanz

In the following, each and every separate company is referred to as "BAUMER" or the "contracting BAUMER company".

- b. Any and all contracts related to the procurement of products, materials, raw materials, machinery, tools, or spare parts by BAUMER, regardless of whether pursuant to general agreements, release orders, or separate contracts, shall be governed solely and exclusively by these Purchasing Terms as most recently revised. The application of any divergent terms and conditions of business of our business partner ("SUPPLIER"), regardless of the form, is excluded.
- c. In the event of contradictions concerning the nature and scope of the mutual services, rights, obligations, and claims, the provisions of the following agreements — if and when such agreements have been concluded — shall apply in the following order:
  - Provisions of the specific order
  - Any non-disclosure agreements concluded between the parties
  - Any cooperation agreements concluded between the parties
  - Any other special agreements
  - These Purchasing Terms

Unless the above-mentioned agreements — if and when they have been concluded — provide otherwise, these Purchasing Terms shall apply supplementarily to the agreements.

## 2. Queries, Quotations, and Orders

- a. Any queries submitted by BAUMER are non-binding. The SUPPLIER will prepare quotations free of charge.
- b. BAUMER does not acknowledge any orders that have not been submitted by the BAUMER Purchasing Department. Modifications or amendments to the orders are binding only if and when BAUMER has confirmed them in text form (fax, e-mail acceptable, hereinafter: "TEXT FORM").

## 3. Periods and Deadlines

- a. The agreed delivery dates are binding deadlines and are shown as the arrival dates at shipping address. Failure to deliver in accordance with agreed deadlines shall be deemed default of delivery without issue of warning notices.
- b. In the event of default of delivery for which the SUPPLIER is accountable, the SUPPLIER will be obligated to payment of a contractual penalty in the amount of 0.3% of the value of the consignment for each and every business day of default; however, the penalty shall not in the aggregate exceed 5% of the net value of the compensation agreed for the delivery in default. Any more extensive contractual or statutory rights and claims owing to default (especially, but not limited to, rescission and damage compensation) will be governed in accordance with legal statutes. The SUPPLIER is entitled to prove to BAUMER that the default did not result in any loss or damage or that the loss or damage suffered was substantially lower. The contractual penalty will be set off against any more extensive damage compensation.

## 4. Shipping, Packaging, and Identification

- a. Consignments shall be shipped in accordance with DDP INCOTERMS 2010. A delivery note showing the BAUMER order number, the description of the identity of the contents, and quantity shall be included with each and every consignment. Additional documents specified by BAUMER or required by legal provisions shall be included as necessary.
- b. Partial delivery is subject to the consent of BAUMER. If and when the SUPPLIER makes partial deliveries without the consent of BAUMER, the delivery performances shall not be deemed in conformity with the contract until they have all been completed.
- c. If and when the SUPPLIER provides machinery or devices, it shall provide technical specifications and operating instructions at no charge. In the case of software products, the delivery obligation shall not be deemed fulfilled until the complete documentation (system requirements and user documents) has been handed over. If software programs have been produced specifically for BAUMER, the source code shall also be handed over.
- d. The SUPPLIER may not conclude any insurance covering shipping damage on behalf of or at the expense of BAUMER.
- e. The SUPPLIER must label the parts or the packaging to ensure the unambiguous tracking of the parts for purposes of identification and classification. Whenever possible, parts shall be labeled in consultation with BAUMER. The packaging units must be labeled adequately.

## 5. Prices, Invoices, and Payment

- a. The agreed prices are fixed prices. They include statutory value-added tax, packaging, and any and all customs duties, taxes, and other charges levied up to the place of performance.
- b. Invoices must show the order number, part number, quantity, and itemized price and must in all other respect satisfy legal requirements with respect to content.
- c. BAUMER will effect payment within 30 days subject to a cash discount of 3% or within 60 days without any deductions. The payment period commences at the point in time at which all preconditions for payment of the compensation claim have been fulfilled in conformity with the contract

and legal provisions and BAUMER has received an invoice properly issued in accordance with all requirements.

- d. Payments do not represent acknowledgment of the conformity of the delivery or performance with the contract. In the event of defective delivery or performance, BAUMER is entitled to retain payment proportionate to value until proper fulfillment.

## 6. Inspection and Complaint Obligations

- a. BAUMER will conduct an incoming goods inspection solely with respect to deviations in identity and quantity which are visible from the outside and to damage, especially, but not limited to, shipping damage, which is visible from the outside. BAUMER will submit complaint of any such defects in accordance with statutory provisions.
- b. Moreover, BAUMER will submit complaint of hidden defects in the deliveries or performances to the SUPPLIER in accordance with statutory provisions as soon as said defects have been discovered during the proper course of the pertinent business.
- c. The SUPPLIER shall prepare and process an 8D report for each and every complaint of defects and submit a statement to BAUMER.

## 7. Quality Requirements and Product Modifications

- a. The SUPPLIER shall comply with state-of-the-art science and technology, statutory regulations, safety regulations, and the agreed specifications in its deliveries and performances. The SUPPLIER confirms that the product is in conformity with any and all regulations of the country at the shipping address. Upon request, the SUPPLIER will grant to BAUMER a viewing of the documentation regarding analyses of hazards and the SUPPLIER's safety program.
- b. The SUPPLIER shall establish a quality management system, maintain records, archive said records for 15 years, and present them upon request.
- c. If and when the SUPPLIER determines the existence of defects which may be relevant for parts which have previously been delivered, it shall immediately notify the incoming goods inspection department/quality department at BAUMER and describe the initiated actions to BAUMER.
- d. Subject to prior agreement in good time, BAUMER may inspect the SUPPLIER's production areas relevant for the manufacture of the contract products together with the SUPPLIER.
- e. The SUPPLIER declares that it is prepared, at its expense, to provide sufficient copies of the required conformity declarations and documentations.
- f. The SUPPLIER shall without delay notify BAUMER in TEXT FORM of any and all possible product modifications in comparison with the order or in comparison with previous deliveries, especially, but not limited to, changes in the manufacturing process or product design as a consequence of changes in production, raw materials, procedures, or technology. In this case, BAUMER may modify the order or rescind the contract if and when this is necessary to ward off hazards or damage or loss.

## 8. Warranty for Material and Legal Defects, Liability for Damage Compensation, Insurance, Limitation Periods

- a. In case of a warranted event, BAUMER may request or initiate the following steps, regardless of any and all statutory warranty rights:
  - The SUPPLIER shall, at its expense, sort out or rework any defective deliveries without delay. If it is urgently necessary to sort out defective products at the BAUMER site owing to time pressures, the SUPPLIER must provide an employee to carry out the work within 24 hours;
  - BAUMER may return any products which have not been delivered in conformity with the contract at the SUPPLIER's expense and risk, unless the SUPPLIER wishes to collect the products and does so immediately. If and when BAUMER returns the products, the SUPPLIER is obligated to pay to BAUMER lump-sum compensation for incurred expenditures in the amount of 5% of the price of the defective products; however, the compensation shall not exceed €500.00 for each return. Furthermore, BAUMER reserves the right to prove that the incurred expenditures were actually higher. In return, the SUPPLIER is entitled to prove that the incurred expenditures were actually lower;
  - In urgent cases in which it is not possible to notify the SUPPLIER of the defect or of imminent loss or damage, and it is not possible to set a deadline for the SUPPLIER to provide its own remedy, BAUMER may itself undertake remedy of the defect, or have the defect remedied, at the SUPPLIER's expense (substitute action), provided that the subsequent performance is not unreasonable for the SUPPLIER;
  - If and when a series defect results in the necessity to replace an entire series of contract products or the BAUMER products in which the contract products have been installed (for instance, because a defect analysis in the specific case is uneconomical, impossible, or unreasonable), the SUPPLIER will also reimburse the costs related to parts of the affected series which do not technically contain any defects.
- b. The SUPPLIER will bear any and all costs incurred for required recall or service activities, provided that the recall or service activities were performed by BAUMER owing to genuine defects in the SUPPLIER's products and the SUPPLIER is accountable for the defects. This provision also applies in the event that the recall or service actions are a consequence of other contractual obligations for which the SUPPLIER is accountable.
- c. Should third parties — regardless of their legal grounds — justifiably assert claims against BAUMER pursuant to a material or legal defect or other defect in the SUPPLIER's delivery or performance, the SUPPLIER is obligated, upon first request, to indemnify and hold harmless BAUMER from and against any and all liability within the internal relationship.

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- d. The SUPPLIER shall maintain product liability insurance cover for personal injury and material damage sufficient to cover any possible product liability risks in addition to its normal public liability insurance policy. Upon request, it will present copies of the insurance policies to BAUMER. The above provision is without prejudice to any more extensive damage compensation claims to which BAUMER is entitled.
- e. The warranty period for material and legal defects is 36 months as of the transfer of risk. The warranty period will be suspended for the period of time between the dispatch of a legitimate notification of defects and (i) proper subsequent performance by the SUPPLIER, or (ii) the SUPPLIER's refusal to carry out subsequent performance. The warranty period will commence anew in the event of subsequent delivery.

## 9. Subcontractors

Contracts for the manufacture of custom parts may not be awarded to subcontractors without BAUMER's written consent. The SUPPLIER's liability for its subcontractors is equivalent to its own.

## 10. Offset

The SUPPLIER's offset of a counterclaim against BAUMER's claims or the exercise of a right of retention is permissible solely if and when the counterclaim has been acknowledged or finally adjudicated. BAUMER is entitled with respect to the SUPPLIER to offset its own claims arising from the business relationship against the SUPPLIER's claims or to assert rights of retention.

## 11. Tools and Materials

- a. BAUMER retains any and all rights to tools and any and all materials for the manufacture of the ordered products for which BAUMER has paid or which BAUMER has provided to the SUPPLIER. The SUPPLIER is entitled to dispose of such tools, whether materially or legally, to change their location, or to make them permanently unusable solely with the express consent of BAUMER. The SUPPLIER bears the costs for maintenance, repair, and replacement of the tools. The above provisions apply mutatis mutandis to replacement tools or replacement materials.
- b. The SUPPLIER is obligated to utilize tools for which BAUMER has paid solely and exclusively for the manufacture of products ordered by BAUMER. The above provision applies as well if and when the SUPPLIER has manufactured the tools at its expense, but in accordance with plans or drawings from BAUMER.
- c. The SUPPLIER is obligated to handle the tools and materials carefully, to store them properly, and to insure them for theft, fire and water damage, and any other loss or damage.
- d. Reproductions of the tools and materials may not be prepared without the written consent of BAUMER. The SUPPLIER may not make provided tools and materials or their reproductions available to third parties or use them for other purposes without written consent.

## 12. Third-party Intellectual Property Rights

- a. The SUPPLIER is liable for the freedom of any and all deliveries and/or performances from third-party rights and for lack of infringement of any patents, utility models, registered designs, or any other intellectual property rights, whether in Germany or abroad, of the products or their use in accordance with the contract, unless the SUPPLIER is not at fault.
- b. The parties covenant to notify each other without delay of any risks of infringement and of alleged cases of infringement which become known to them. Moreover, they covenant to give each other the opportunity to defend against any such claims by mutual agreement.
- c. The SUPPLIER shall, upon request, assign to BAUMER in return for reasonable compensation any and all inventions or other transferable work results related to the execution of a contract concluded between the parties, provided said inventions or work results are suitable for protection by intellectual property rights or their suitability for such protection cannot be excluded. The SUPPLIER must, if legally necessary, take effective legal action to obtain the rights to inventions from its employees.

## 13. Confidentiality/Data Protection

The SUPPLIER will treat in strict confidence any and all commercial and technical data and documents which are not obviously generally known and which become known to it within the context of the business relationship with BAUMER. The data should be processed or utilized solely for the contractually agreed purpose and handed on to third parties solely with BAUMER's consent. The SUPPLIER covenants to safeguard any and all data received from BAUMER in a place protected from third-party access.

## 14. Code of Conduct

- a. The SUPPLIER is familiar with, and is committed to, the ethical and legal principles as embodied in the "Code of Conduct Regarding Business Activities of Baumer Group" and complies with them. Code of Conduct at: <http://www.baumer.com/agb-aeb>
- b. The SUPPLIER requires equivalent ethical and legal principles from its own suppliers.

## 15. Non-disclosure

The SUPPLIER covenants to maintain strict confidentiality with respect to any and all commercial technical details which are not obviously generally known and which become known to it through the business relationship, in particular, but not limited to, documents provided by BAUMER such as models, drawings, plans, illustrations, and similar documents. They may not be disclosed to third parties without the express written consent of BAUMER.

## 16. Severance

Should individual clauses of these Purchasing Terms, in whole or in part, be or become invalid, the validity of the remaining clauses shall not be affected.

## 17. Proper Law, Venue

- a. The legal relationships between BAUMER and the SUPPLIER in their entirety shall be governed solely and exclusively by
  - German law, if and when the registered office of the contracting BAUMER company is in Germany;
  - Swiss law, if and when the registered office of the contracting BAUMER company is in Switzerland.
  - Application of the rules of conflict of law in international private law and of the UN Convention on the International Sale of Goods (CISG) is excluded.
- b. Exclusive venue for any and all disputes arising from or with respect to the business relationship between BAUMER and the SUPPLIER is the site of the relevant member company of the Baumer Group or after choice of BAUMER at location of supplier.