

# General Terms and Conditions of Purchase of Bott GmbH & Co. KG

(as at 01/2017)

## § 1 General - Scope of Application

1. Our orders placed with entrepreneurs, legal entities under public law or special funds under public law within the meaning of § 310 Par. 1 German Civil Code are based exclusively on these General Terms and Conditions of Purchase.
2. Unless we have expressly agreed to their validity in writing, conflicting terms and conditions or terms and conditions of the supplier that deviate from our General Terms and Conditions of Purchase shall not apply.
3. Our General Terms and Conditions of Purchase shall also apply if we unconditionally accept the supplier's delivery in the knowledge that the supplier's terms and conditions conflict with or deviate from our General Terms and Conditions of Purchase.
4. Our General Terms and Conditions of Purchase shall also apply to all future orders placed with the supplier.
5. Individual agreements made in individual cases, including collateral agreements, supplements and amendments, shall take precedence over these General Terms and Conditions. Such agreements' content shall be governed by a written contract or by our written confirmation.
6. The statutory provisions shall apply, unless regulated otherwise below.

## § 2 Order - Offer Documents - Subject to Alteration

1. When we revoke the order prior to receipt or simultaneously with receipt, our order shall not be binding. Any further regulations in our order regarding the binding nature of the order shall remain unaffected by this regulation. The supplier must notify us of obvious errors (e.g. spelling and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correction or completion prior to acceptance; otherwise the contract shall be deemed not to have been concluded.
2. Acceptance of our order must be declared in writing by the supplier immediately upon receipt, at the latest within 10 working days (Monday-Friday). The receipt of our declaration of acceptance is decisive for timely acceptance. The timely acceptance of our order constitutes a contract. A delayed acceptance shall be deemed a new offer, and it will require our acceptance.
3. We are entitled to change the time and place of delivery, as well as the type of packaging, at any time by means of written notification, with a time window of at least 5 working days (Monday-Friday) prior to the agreed delivery date. The same shall apply to changes regarding product specifications if and to the extent that these can be implemented within the framework of the supplier's normal production process without considerable additional expense, whereby, in such cases, the notification period pursuant to the preceding sentence shall be at least 6 weeks. We shall reimburse the supplier for the proven and reasonable additional costs incurred as a result of the change. If such changes result in delivery delays that cannot be avoided with reasonable efforts in the supplier's normal production and business operations, the originally-agreed delivery date shall be postponed accordingly. The supplier shall notify us in writing of the additional costs or delays in delivery to be expected from him in the case of careful assessment in good time before the delivery date, at least, however, within 5 working days (Monday-Friday) after receipt of our notification pursuant to sentence 1.
4. If, with purchase contracts, we are no longer able to use the ordered products, either in full or in part, in our business operations due to circumstances occurring after conclusion of the contract (including instalment purchase contracts), we shall be entitled to declare rescission or partial rescission at any time with a written declaration stating the reason. In the event of a partial rescission, we shall reimburse the supplier for the partial performance rendered by him.  
If the procurement contract is a continuing obligation (including a successive delivery contract), we shall, by stating the reason, be entitled to terminate the contract at any time if we are no longer able to use the ordered products in our business operations, due to circumstances occurring after conclusion of the contract. In this case, we shall reimburse the supplier for the partial performance rendered by him.

## § 3 Prices – Packaging

1. The price stated in the order is binding. All prices are quoted inclusive of statutory value-added tax if this is not shown separately.
2. Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs, including any transport and liability insurance).
3. Cost estimates will only be remunerated by special agreement.
4. At our request, the supplier must take back the packaging at his own expense.

## § 4 Terms of Payment - Invoice

1. Unless otherwise agreed in writing, we shall pay the purchase price within 14 days of delivery and receipt of invoice with 3% discount, or within 30 days net. The receipt of our transfer order by our bank shall suffice for proving the timeliness of the payments owed by us.
2. The invoice may not be enclosed with the delivery.
3. All order confirmations, delivery documents and invoices must state the order number, order date, order reference, delivery quantity, and delivery address. Should one or more of the aforementioned be missing, and the processing by us be delayed as a result of this, within the context of our normal business dealings, the payment periods as specified in paragraph 1 shall be extended by the period of the delay.
4. If premature deliveries are accepted, the periods according to paragraph 1 shall not commence until after the agreed delivery date.

## § 5 Delivery Period - Delay in Delivery - Delay in Acceptance

1. The delivery dates and periods stated by us in the order are binding. The supplier's dates are irrelevant for the time of the supplier's performance, unless they coincide with the dates stated by us. Unless otherwise agreed, early deliveries are not permitted.
2. When the delivery time is not specified in the order and no other agreement has been made, delivery shall be made within 3 weeks of conclusion of the contract.
3. The supplier is obliged to inform us immediately and in writing when circumstances arise that prevent compliance with the delivery time, or it becomes it apparent that the delivery time cannot be met. The supplier can only invoke force majeure if he has informed us of this immediately after becoming aware of these circumstances.
4. In the event of a delivery delay, we shall be entitled to demand a contractual penalty from the supplier for each working day (Monday-Saturday) of the delivery delay amounting to 0.2% of the invoice value (net) of the relevant contract with which the supplier is in default, up to a maximum of 5% of this invoice value (net). The contractual penalty shall be set off against any claim for damages. We reserve the right to assert further claims for damages.
5. Acceptance of late delivery shall not constitute a waiver of the contractual penalty or claims for damages. The reservation of the contractual penalty can still be asserted by us up to the final payment of the corresponding delivery.
6. The statutory provisions shall apply for the occurrence of acceptance default. However, the supplier must also expressly offer his services to us if a specific or determinable calendar period has been agreed for an act or cooperation on our part (e.g. provision of material). When we are in default of acceptance, the supplier may demand reimbursement of his additional expenses in accordance with the statutory provisions (§ 304 German Civil Code). The supplier can only demand possibly arising claims for damages if the additional contractually-agreed or statutory requirements are met. In particular, if the contract refers to an unsound item that is to be manufactured by the supplier (one-off production), the supplier shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

## § 6 Delivery - Place of Performance - Acceptance - Passing of Risk

1. The delivery within Germany shall be "free domicile" to the place indicated in the order. If the destination is not specified, and no agreements to the contrary have been made, delivery shall be made to our place of business in 74405 Gaildorf, Germany.  
The respective destination shall also be the place of performance (obligation to deliver).
2. The supplier is not entitled to effect partial deliveries without our prior written consent.
3. The delivery shall be accompanied by a delivery note that states the order number, the date (issue and dispatch) and contents of the delivery (order reference and quantity) in a sealed envelope. If the delivery note is missing or incomplete, we shall not be responsible for any resulting delays in processing and payment.
4. If acceptance has been agreed, both contracting parties shall confirm the successful acceptance in writing in an acceptance protocol. Commissioning does not replace acceptance. There shall be no obligation of acceptance by us in the event of force majeure.
5. The risk of accidental loss and accidental deterioration of the delivery shall pass to us upon handover at the place of performance. When acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law governing contracts for work and services shall also apply mutatis mutandis in the event of acceptance.

## **§ 7 Offsetting - Right of Retention - Assignment of Claims - Reservation of Title**

1. We shall be entitled to set-off and retention rights, as well as the plea of non-performance of the contract, to the extent permitted by law. In particular, we shall be entitled to withhold due payments as long as we are still entitled to claims against the supplier that arise from incomplete or defective performances.
2. The supplier may only assign his claim to third parties with our written consent.
3. Provided materials / provided parts (hereinafter referred to as "Provided Items") shall remain our property, shall be marked as our property by the supplier, and shall be stored separately from other items by the supplier. Unless he is not responsible for this, the supplier is liable for damage or loss.
4. If the item provided is combined or inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item provided to the other combined or mixed items at the time of the combination or mixing. When the combination or mixing ensues in such a way that an item of the supplier is to be regarded as the main item, it shall be deemed agreed that the supplier hereby assigns to us co-ownership of the new item in the ratio of the value of the item provided to the other combined or mixed items at the time of the combination or mixing. We accept the transfer of ownership.
5. The processing or transformation of the item provided by the supplier shall always be carried out on our behalf. When the provided item is processed with other items not belonging to the supplier, we shall acquire co-ownership of the new item in proportion to the value of the provided item to the other processed items at the time of processing.
6. The supplier shall keep the item in which we have sole or co-ownership in safe custody for us and free of charge, and shall insure it adequately against property damage, loss, etc., at his own expense.
7. Unless otherwise agreed in writing, the supplier is obliged to surrender to us the items provided or other items in our sole or co-ownership.
8. The supplier's retention of title shall only apply when and insofar as it relates to our payment obligation for the respective products to which the supplier retains the title. Any extended or prolonged retention of title by the supplier shall be ineffective.

## **§ 8 Quality – Documentation**

1. The supplier shall be obliged to supply us with products that comply with state-of-the-art technology, the recognised rules of technology, and the latest state of development of the manufacturer at the time of delivery and the applicable public law regulations at the time of delivery (e.g. REACH Regulation and Hazardous Substances Regulation).
2. If the supplier has received drawings, samples or other documents or regulations from us, he shall be obliged to comply with these specifications, especially regarding the type, quality and design of the product.
3. If we have requested initial samples, serial production may only begin after written approval of the samples.
4. Concerns on the part of the supplier against our specifications must be communicated to us in writing immediately and, specifically, before the start of series production.
5. Test documents must be stored for 15 years and submitted to us as required. The supplier shall oblige upstream suppliers to the same degree, to the extent permitted by law.
6. After prior notice, we, as well as our customers, are entitled to inform ourselves at reasonable intervals during normal operating hours on the production site and in the supplier's production facilities about the course of product manufacturing at the supplier and about compliance with the supplier's contractual obligations, in particular with regard to compliance with the agreed specifications, delivery dates and quality assurance measures.

The announcement period shall be at least 3 working days (Monday-Saturday). During such access, the supplier shall provide a professionally-qualified employee for support. In doing so, we shall take the supplier's need for confidentiality into account. If authorities require us or the supplier to inspect the production process and the production documents to verify certain requirements, the supplier agrees to give them the opportunity to inspect this in his company, too.

## **§ 9 Defect Investigation**

1. The supplier performs an outgoing goods inspection. We will inspect the delivered products for identity and quantity deviations, as well as clearly visible transport damage and obvious defects, and we will notify the supplier of these within 7 working days (Monday-Friday) of receipt of the relevant products. With hidden defects, the complaint shall be considered made in good time if it is made within 5 working days (Monday-Friday) after discovery of the defect. There shall be no further obligation to give notice of defects.
2. The obligation to give notice of defects does not apply to contracts for work and services and other contracts that include acceptance.
3. Any payment of the purchase price made before discovery of the defects does not constitute recognition that the products are defect-free and have been delivered in accordance with the regulations.

4. The statute of limitations for warranty claims shall be suspended by the supplier upon receipt of our notice of defects until the supplier rejects our claims, declares the defect rectified, or otherwise refuses to continue negotiations on our claims.

## **§ 10 Material Defects**

1. The statutory provisions shall apply to our rights in the event of material defects (including incorrect and shortfall in delivery, as well as improper assembly, inadequate assembly, instruction manual or operating instructions), unless otherwise specified in the following.
2. Any product descriptions that - in particular by designation or reference in our order - are the subject of the respective contract or have been incorporated into the contract in the same way as these General Terms and Conditions of Purchase, as well as the requirements pursuant to Clause 8, Paragraph 1 of these General Terms and Conditions of Purchase, shall in any case be considered to constitute an agreement as regards quality. It doesn't make any difference whether the included product description comes from us, from the supplier or from the manufacturer.
3. With a defective delivery, we shall be entitled, at our discretion, to demand either rectification of the defect (subsequent improvement), or delivery of a defect-free item (replacement delivery).
4. The supplier shall bear the costs for subsequent performance, in particular transport costs, material costs and labour costs. This shall also apply to costs that are incurred as a result of a defective product being deinstalled from another item and a defect-free product being reinstalled in the other item.
5. Any return of rejected products shall be at the expense and risk of the supplier, regardless of the location of the defective product.
6. When the supplier fails to comply with his obligation to subsequent performance within a reasonable period set by us, we may remedy the defect ourselves and demand compensation from the supplier for the expenses incurred, or an appropriate advance payment. If subsequent performance by the supplier has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline needs to be set; we shall inform the supplier of such circumstances immediately and in advance if possible.
7. Furthermore, pursuant to the statutory provisions, we shall be entitled to reduce the purchase price or withdraw from the contract in the event of a material defect. We shall also be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## **§ 11 Defects of Title**

1. Unless otherwise specified below, the statutory provisions shall apply to our rights in the event of defects of title.
2. The supplier warrants that the products are free from third party industrial property rights that conflict with or restrict contractual and normal use.
3. The supplier is obliged to indemnify us against all claims made by third parties against us due to the infringement of industrial property rights mentioned in paragraph 2 and to reimburse us for all necessary expenses in connection with this claim. This entitlement shall not exist when the supplier proves that he is neither responsible for the infringement of the industrial property right, nor should have been aware of it at the time of delivery, had he exercised due commercial care.
4. Our further legal claims arising from defects in title of the products delivered to us, in particular withdrawal from the contract, remain unaffected.
5. The supplier undertakes to inform us of the discovery of the risks of infringement and of alleged cases of infringement immediately, and undertakes to support us at our request in the defence against claims by third parties.

## **§ 12 Product Liability - Indemnification - Liability Insurance Protection**

1. Unless otherwise specified below, our claims against the supplier on account of product liability shall be governed by the statutory provisions.
2. Insofar as the supplier is responsible for damage caused by an item delivered by us, he shall indemnify us against claims by third parties to the extent that the cause lies within his sphere of control and organisation, and he is himself liable in his relation to third parties.
3. Within the scope of his obligation to indemnify, the supplier must reimburse expenses resulting from or in connection with claims asserted against third parties, including recall actions carried out by us. As far as possible and reasonable, we shall inform the supplier about the content and scope of recall measures and give him the opportunity to comment. Further legal claims remain unaffected.
4. The supplier is obliged to maintain product liability insurance at his own expense with a coverage of at least € 5 million per claim, which also covers the recall risk. The supplier shall send us a copy of the liability policy at any time upon request.

## **§ 13 Limitation to Liability**

1. Unless otherwise stated in these General Terms and Conditions of Purchase, including the following provisions, we shall be liable for damages pursuant to the applicable statutory provisions.
2. We shall be liable for damages - regardless of the legal reason - for cases

- of intent and gross negligence.
3. In the case of simple negligence, we shall only be liable
    - a) for damages resulting from injury to life, body or health;
    - b) for damages arising from the breach of an essential contractual obligation (essential contractual obligations are those, the fulfillment of which is necessary to achieve the objective of the contract, and on whose fulfillment the supplier could reasonably rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
  4. The above limitations of liability do not apply in the event of fraudulent intent or the assumption of a guarantee. In the case of a guarantee, the scope of liability shall arise from the guarantee declaration.
  5. Entitlements arising from compelling legal liability factual findings remain unaffected.
  6. The above limitations of liability shall apply to the same extent in favour of our agents, legal representatives, employees and vicarious agents.

#### § 14 Statute of Limitations

1. Provided nothing to the contrary is stipulated below, the mutual entitlements of the contracting parties shall become statute-barred in accordance with the statutory provisions.
2. Notwithstanding § 438 Par. 1 No. 3 German Civil Code, the limitation period for claims based on defects of quality and title shall be 3 years from the passing of risk. The statutory limitation periods pursuant to § 438 Par. 1 No. 1 and No. 2 German Civil Code remain unaffected.
3. Insofar as we are also entitled to non-contractual compensation claims due to a defect, the regular statutory limitation period (§§ 195, 199 German Civil Code) shall apply here, unless the application of the limitation periods of the sales law in individual cases leads to a longer limitation period.

#### § 15 Spare Parts

1. After delivery, the supplier is obliged to keep spare parts for the products delivered to us in stock for a period of at least 10 years. This period begins with the delivery or acceptance of the product.
2. When the supplier intends to discontinue the production of spare parts for the products delivered to us, he shall notify us of this immediately and in writing after the decision to discontinue the production. Subject to paragraph 1, this decision must be made at least 12 months before production is discontinued.

#### § 16 Documents - Production Equipment - Tools

1. We reserve ownership rights and copyrights to illustrations, drawings, samples, calculations and other documents which we make available to the supplier.
2. The supplier may use the documents referred to in paragraph 1 solely for production based on our order; after processing the order, the supplier must return them to us free of charge immediately.
3. We reserve retention of title to tools provided; the supplier is obligated to use the tools solely for manufacturing the products ordered by us.
4. Ownership of the tools, models, devices, printing plates, etc. to be manufactured by the supplier for producing our orders and other contracts. (hereinafter referred to as "tools") are hereby transferred to us by the supplier. We accept the transfer of ownership. The supplier shall store the tools for us free of charge. The supplier shall mark the tools as our property and store them separately from other items. The supplier shall insure the tools at his own expense to an appropriate extent. The supplier shall also use these tools solely for the manufacturing the products ordered by us.

#### § 17 Confidentiality

1. All business or technical information made available by us must be kept secret by the supplier toward third parties as long as and to the extent that it is not demonstrably publicly known and may only be used for the purposes of our contracts with the supplier. The supplier may only make the confidential information available to persons who need to be called upon in order to execute the contracts with us.
2. Without our written consent, the supplier may not use, copy, duplicate or hand over, make accessible or disclose illustrations, drawings, samples, calculations and other documents owned by us to third parties.
3. To the extent described above, the supplier shall ensure that his employees, consultants, shareholders, subcontractors and others who learn of these trade secrets are obliged to protect our trade secrets.
4. These obligations shall also apply after termination of the contractual relationship. They expire when and insofar as the information contained in the documents provided has become generally known.
5. Products that are manufactured according to documents designed by us, such as drawings, models and the like, in accordance with confidential information provided by us or with our tools or tools copied by us, may neither be used by the supplier itself, nor offered or supplied to third parties. This shall also apply mutatis mutandis to print orders.
6. Parts that we have developed or further developed in cooperation with the

supplier may only be supplied to third parties by the supplier with our written consent.

7. At our request, all information originating from us (including any copies or records made) and loaned items shall be returned to us immediately and completely, or irretrievably destroyed upon request. The supplier shall only have a right of retention when the claims are undisputed or have been finally determined by a court of law.

#### § 18 Applicable Law - Jurisdiction - Contract Language / German Version

1. These General Terms and Conditions of Purchase and the contracts between us and the supplier, in particular the supply contracts, shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).  
The requirements and effects of the retention of title are subject to the law of the respective location of the object if the choice of law and jurisdiction in favour of German law made thereafter is inadmissible or ineffective.
2. Our registered office shall be the exclusive place of jurisdiction for all disputes arising either directly or indirectly from the General Terms and Conditions of Purchase and the contracts between us and the supplier, in particular from the supply contracts.  
When we act as plaintiff or claimant, we shall instead also be entitled, but not obliged, to appeal to the court at the supplier's general place of jurisdiction.
3. The contract language shall be German.
4. In case of doubt, only the German version of our General Terms and Conditions of Purchase shall be authoritative.

#### § 19 Subsidiary Agreements - Partial Invalidity

1. Collateral agreements, reservations, changes and additions must be made in writing. This also applies to changes to this written form clause.
2. Should any provision of these General Terms and Conditions of Purchase be or become invalid or unenforceable, the remaining provisions shall remain unaffected thereby. The ineffective or unenforceable provision shall be replaced by the effective and enforceable provision which comes closest to the purpose of the ineffective or unenforceable provision. This shall apply accordingly in the event of loopholes.

#### Note:

The customer acknowledges that we store data from the contractual relationship in accordance with Article 6 paragraph 1 letter b) of the General Data Protection Regulation for the purpose of data processing and reserve the right to transfer the data to third parties (e.g. insurance companies) to the degree necessary for the fulfilment of the contract.

#### **Bott GmbH & Co. KG**

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