

# Terms & Conditions of Purchasing

Version: January 2017 – [www.bachmann.info/service/purchasing](http://www.bachmann.info/service/purchasing)

## **§ 1 Scope**

- (1) The present *Terms and Conditions of Purchasing* ("TCP") apply to all orders, assignments and contracts (all together: "Order[s]") from/by/with Bachmann electronic GmbH and/or its affiliated companies ("Bachmann") unless there is a written agreement to the contrary. The TCP are amended from time to time; the most recent version may be viewed on [www.bachmann.info/service/purchasing](http://www.bachmann.info/service/purchasing). In any case, the version which is most recent at the time of the Order applies. The TCP are available in a German and an English language version; relevant is the version whose language is identical to the language of the Order.
- (2) Supplier's pre-existing terms and conditions – whether designated as "conditions of supply", "general terms and conditions/T&Cs" or similar – shall not apply, not even if Bachmann unconditionally accepts documents (e.g. confirmation of Order or delivery slip) in which they are referenced, unconditionally accepts a delivery from a supply or service contract or makes payment and/or by any other act or omission of Bachmann.
- (3) Any statement or expression with relevance for the contractual relationship between Bachmann and Supplier needs to be in writing. Any statement or expression which was made erroneously or which is faulty due to mistakes in spelling or calculation is non-binding and requires Supplier to verify the exact content of such statement or expression.
- (4) In case of a discrepancy between an Order and a stipulation of the TCP, the former shall prevail.
- (5) In addition to the TCP, the *Delivery and Packaging Instructions* as amended from time to time ([www.bachmann.info/service/purchasing](http://www.bachmann.info/service/purchasing)) apply.

## **§ 2 Ordering**

- (1) Bachmann is only bound to an Order if it is in writing and was placed by an authorized member of Bachmann's purchasing department.
- (2) Acknowledgements, confirmations of receipt and similar are for documentation purposes only; they have no contractual relevance. If Bachmann remains silent in case of an acknowledgement, etc which differs from an Order, this shall not be construed as consent.
- (3) Basic enquiries, including invitations to tender, are non-binding and shall not entitle Supplier to any compensation. Any expenses incurred in connection with a tender are to be borne by Supplier.
- (4) Tenders, quotations and similar shall be binding on Supplier and may be accepted by Bachmann within the acceptance period; if there is no explicit acceptance period, acceptance shall be sufficient if made within 24 weeks after receipt.

## **§ 3 Delivery/Service**

- (1) Time is of the essence with regard to agreed delivery/service dates. Time and place of the delivery/service are as indicated in the Order meaning that at such time and place deliveries shall be made and services started respectively. If the Order specifies a delivery period such period

starts when Supplier receives the Order. Delivery/service shall be within the agreed time if Bachmann takes over and/or accepts such delivery/service within that period.

- (2) Bachmann shall be entitled to reject any early or late delivery/service and return them to Supplier upon Supplier's cost and risk. In case of an early delivery, Bachmann shall be entitled to all costs resulting from such early delivery (storage, insurance, etc.).
- (3) Supplier shall immediately inform Bachmann in writing and with sufficient detail if any delay in delivering the goods or rendering the service is to be expected.
- (4) Bachmann shall be entitled to reject partial-, over- or under-deliveries and return them to Supplier upon Supplier's cost and risk.
- (5) A note indicating the type and quantity of items delivered and including the Order and article numbers as well as all details necessary for the determination of preferential treatment (e.g. declaration of origin) shall be included with every delivery.
- (6) In every case of a delay, Bachmann shall be entitled to an immediately payable penalty of 1% of the net value of the relevant item for every commenced calendar week of delay, up to a maximum of 10%. To the extent Bachmann provides conclusive evidence, any damage in excess of such liquidated damage shall be compensated by Supplier and Bachmann shall be indemnified for any costs which result from the actual or potential delay (e.g. costs of accelerated delivery). Moreover, Bachmann shall be entitled to partially rescind the contract in question.
- (7) In the absence of Bachmann's prior written consent, Supplier shall not be entitled to sub-contract partially or totally any Order to any third party except for the inevitable procurement of raw materials or standard parts.
- (8) Even without any explicit reference in the respective Order, all deliveries shall include the data sheet for each product, installation, operation and maintenance manuals as well as a list for wear and spare parts, each in German language.
- (9) At Supplier's own expense, he shall be obliged to procure all government approvals for importing the goods to be delivered and keep Bachmann up to date with regard to any approvals necessary for the exportation of such goods. The same is true for any dual-use-classification of the goods ordered.
- (10) If the Order concerns a service this shall be a work for hire. Upon payment of the contract price Bachmann shall be entitled to all tangible and intangible results (including know-how) of Supplier's work. In particular, Bachmann shall be entitled to use these results with no restrictions whatsoever – e.g. for merely internal purposes as well as full commercialisation – and need not seek Supplier's approval or pay additional compensation. Supplier shall be obliged to take in a timely manner all legal as well as factual measures to implement the full, unrestricted and unencumbered transfer of rights.

#### **§ 4**

#### **Place of Delivery/Service, Transfer of Risk**

- (1) Unless stated otherwise in the Order, the place of delivery/service as well as place of execution is the premises on which the ordering Bachmann-entity is established. Delivery/service shall be executed in accordance with the specifications of the Order, in particular as regards time and manner. Unless otherwise agreed, deliveries shall be made "DDP" (Incoterms 2010) named place of destination.
- (2) Any risk is transferred after the unloading and handing-over of the goods at the place of delivery, and once service has been completed and accepted at the place of service.

## § 5 Costs, Invoicing and Payment

- (1) Prices as indicated in the Order are fixed and include Supplier's compensation for all fees, taxes (excluding value added and income tax) and other levies, costs of transport and insurance as well as all other costs incurred in fully executing the contract in question (including industry-standard packaging). Supplier undertakes not to contest the validity of the contract because of error, gross under-payment and the like.
- (2) In the absence of another written agreement, Supplier shall charge and invoice EUR-prices.
- (3) Invoices shall comply with all legal requirements and be sufficiently detailed so as to enable Bachmann to verify the invoice amount; in particular, they shall include the respective Order number. Any delay in payment resulting from non-compliance with the foregoing shall be the sole responsibility of Supplier. In addition to that, Bachmann reserves the right to return invoices which do not comply with the requirements as stipulated herein; in such case, the invoice shall be deemed not to have been presented.
- (4) In case the goods supplied and/or services rendered are incomplete and/or defective, Bachmann shall be entitled to withhold payment until the contract in question has been properly executed.
- (5) In the absence of another agreement and on the condition of full contract compliance, including non-defective goods supplied and services rendered, Bachmann undertakes to pay within 14 days after receipt of the invoice with a discount of 3% or within 90 days (full invoice amount). Payment shall be considered on time as long as instructions to the bank are given on the last day of the before-mentioned term.
- (6) All payments made are subject to an error on the part of Bachmann and without acknowledging any claim, neither as regards the claim's reason nor its amount. No payment shall be construed to mean anything other; in particular, no payment shall mean an (unconditional) acceptance of goods supplied and/or services rendered.
- (7) The interest rate shall be 5% p.a.
- (8) Bachmann shall be entitled to set-off its own claims (and those of its affiliated companies) against those of Supplier. Any set-off by Supplier shall be excluded unless the claim has been acknowledged by Bachmann in writing or finally determined by a court of competent jurisdiction.

## § 6 Warranty

- (1) The product or service ordered must be state-of-the-art as regards *inter alia* materials and workmanship and comply with all the specifications specifically agreed upon or usually expected from products and services of that type. Only brand new first class materials may be used and all products must comply with prototypes or samples (if any). Furthermore, it must comply with all laws and technical standards of Austrian and/or international origin, including those on the restriction of hazardous substances (RoHS). Finally, the requirements of the respective tender documents (if any) shall be complied with.

If Supplier thinks that the tender documents or any other of Bachmann's instructions are unclear, incomplete or inconsistent, it shall immediately – in any case before presentation of an offer or the like – inform Bachmann thereof in writing and make a proposal as to how to proceed.

- (2) Goods to be delivered must conform to all the type approvals, accreditations and/or certifications listed in the Order.

- (3) Supplier shall be obliged to fully examine the quality and quantity of the products and/or services to be shipped and/or rendered to Bachmann and shall inform Bachmann about any defect immediately. Any duty of examination or objection on the part of Bachmann shall hereby be dispensed with.
- (4) As elected by Bachmann, Supplier shall be obliged to replace defective products or re-render defective services, remove any defect – in each case at no cost or risk to Bachmann – or grant Bachmann a reasonable price discount. Bachmann shall be entitled to a replacement of the entire shipment or to a rescission of the entire contract even if only single items/parts of the shipment/service are defective. Any right to (partially) cancel the contract shall not be affected thereby. Any replacement products shall become Bachmann's property.
- (5) Supplier shall be obliged to track and save in accordance with state-of-the-art systems all data (serial number, batch number, date code, etc) which are necessary for the individual identification of serially produced products. Upon request, these data shall be made available to Bachmann immediately and at no cost to Bachmann. Failing this, Supplier shall be obliged to bear all costs resulting from non-compliance with this obligation (e.g. search and recall costs).

## **§ 7**

### **Third Party Intellectual Property/IP**

- (1) Insofar as the products to be supplied and/or services to be rendered require the use of third party IP, Supplier shall be obliged to acquire such rights for an indefinite period of time and at no further cost or risk to Bachmann. Furthermore, Supplier undertakes to grant such rights to Bachmann to the necessary extent.
- (2) Supplier warrants that no third party rights are infringed by reason of him supplying products or rendering services. Bachmann shall be held harmless and fully indemnified in this respect.

## **§ 8**

### **Damages, Insurance**

- (1) Supplier shall be liable for all damages resulting from breach of any contract between Supplier and Bachmann. In particular, Bachmann shall be indemnified for all damages resulting from third party claims.
- (2) Furthermore, Supplier shall be obliged to take out with a reputable insurance company and maintain for the duration of the business relationship with Bachmann public and product liability insurance equivalent to the volume of trade with Bachmann. Bachmann shall be entitled to request a confirmation of such insurance at any time. Furthermore, Bachmann shall be entitled to pay any outstanding premiums on Supplier's expense.

## **§ 9**

### **Tools and Other Devices**

- (1) Tools and other devices which have been made available or wholly or partially paid for by Bachmann, such as moulds, drawings, films, printing blocks, plans and models, are and remain Bachmann's exclusive property. They may be used only for goods to be delivered or services to be rendered to Bachmann. Supplier shall be obliged to store the tools and other devices separately, to mark them as Bachmann's property and to take out insurance against their theft, loss or deterioration. All claims against the insurance company are herewith assigned to Bachmann; Bachmann herewith accepts such assignment.

- (2) Supplier shall be obliged to inspect regularly and to keep and maintain in good working condition the tools and other devices. Any theft, loss or deterioration shall be immediately reported to Bachmann in writing.
- (3) Supplier shall be obliged to keep the tools and other devices for a period of at least 10 years after the last product being shipped or the last service being rendered to Bachmann, each using such tool or other device. After this period, Supplier and Bachmann shall agree on how to proceed.
- (4) Upon Bachmann's request and at Supplier's own risk and cost, it shall immediately return the tools and other devices. Until such return, Supplier bears the risk of theft, loss or deterioration.

## **§ 10 Materials Made Available**

- (1) Materials made available by Bachmann remain the property of Bachmann. Supplier shall be obliged to store and manage these materials separately, clearly mark them as Bachmann's property and take out insurance against their theft, loss or deterioration; each at its own cost. Supplier assigns all entitlements to insurance compensation to Bachmann and Bachmann accepts such assignment. Furthermore, Supplier shall be obliged to order and keep in stock materials to be made available by Bachmann at such time as to allow it to comply fully with its contractual obligations vis-à-vis Bachmann. Finally, Supplier shall be obliged to examine the materials made available by Bachmann and issue a written warning if there are any concerns regarding their suitability for further processing.
- (2) If the materials made available are commingled or processed, this will result in Bachmann's joint ownership in the newly created product in relation of the materials made available (procurement costs) to value of the other materials used or value of processing.

## **§ 11 Confidentiality**

- (1) Supplier undertakes to keep all information about the commercial relationship to as well as Bachmann's and Bachmann's partners' business and/or industrial secrets confidential – whether the respective media are marked as such or not – and not to disclose them to third parties, not even after contract execution. Supplier shall be obliged to make this a binding obligation on its employees. Only such employees and sub-suppliers who are involved in contract execution may have access to confidential information. Documents and all other media remain the property of the party who has provided them and shall be immediately returned to that party upon its request; no copies may be retained. In case any non-disclosure agreement has been individually negotiated between Bachmann and Supplier, such agreement shall govern the relationship between the parties and prevail over any conflicting provisions herein. The same is true of (unilateral) non-disclosure undertakings which Supplier may have given at the request of Bachmann.
- (2) If and whenever this is necessary for contract execution, Supplier may pass on confidential information to subcontractors subject to prior written consent from Bachmann (which *inter alia* is dependent on subcontractor accepting confidentiality to the extent provided for by the previous paragraph).

**§ 12**  
**Quality Assurance, Change in Materials,  
Production Stop**

- (1) For the duration of its relationship with Bachmann and at its own cost, Supplier shall be obliged to introduce and/or maintain a modern and efficient quality assurance programme. Upon the request of Bachmann, Supplier shall be obliged to make available all documentation concerning such quality assurance programme and allow for its audit on Supplier's premises. The existence of such quality assurance programme shall be part of Bachmann's supplier evaluation.
- (2) Supplier shall be obliged to inform Bachmann in writing and immediately (in any case with a notice period of at least six months) if any changes to raw materials and/or components to be used, production procedures, and/or sub-suppliers are intended.
- (3) Supplier shall be obliged to inform Bachmann in writing and at least six months in advance if any components which Bachmann has ordered in the past are discontinued or business is stopped completely.

**§ 13**  
**Force Majeure**

- (1) Force Majeure shall be any unpredictable event which cannot be avoided by exercising appropriate prudence in line with industry standards and/or taking reasonable economic measures and which prevents either party momentarily or permanently from fulfilling its contractual obligations ("Force Majeure"). Examples of Force Majeure are changes of applicable law, natural disasters (such as earthquakes, floods, hurricanes), terrorist attacks and war as well as labour disputes.
- (2) The party affected shall immediately inform the other party hereof in writing and take all reasonable measures to minimize the effects of the Force Majeure event. In case the fulfilment of material contractual obligations cannot take place for more than six months due to the Force Majeure event, any party may terminate the contract in question with immediate effect and without any liability due to such termination.

**§ 14**  
**Compliance with Law and Industry Standards,  
"Conflict Free"-Sourcing**

- (1) When dealing with Bachmann in whatever form, Supplier shall be obliged to comply with all applicable law (including, but not limited to, human rights, environmental and employment protection, anti-corruption) and to continually improve the respective industry standards set by such laws and/or contained in international conventions. Bachmann reserves the right to occasionally audit such compliance. Compliance with laws and internationally recognized standards shall be part of Bachmann's supplier evaluation.
- (2) Supplier shall be obliged to eliminate all acts of bribery, granting of favours or other undue inducement of any representative of Bachmann. Anything to the contrary, including all attempts of acting to the contrary, entitles Bachmann to terminate the respective Order. Moreover, Supplier shall be liable for all damages resulting therefrom.
- (3) Furthermore, Supplier shall be obliged to ensure that his sub-contractors are complying with all applicable laws. This shall be taken into account in Bachmann's supplier evaluation.

(4) Bachmann accepts only raw-materials, construction parts and components, which have been sourced “conflict free”. For the purposes of this clause, “conflict free” means that the chemical elements:

- tin,
- tantalum,
- tungsten, and
- gold

need to have been sourced by Supplier from a smelter/refiner which has been listed on the website

<http://www.conflictreesourcing.org/>

as a “Compliant Smelter/Refiner” for the chemical element in question at the time of sourcing. Raw materials, construction parts and components which do not qualify as “conflict free” pursuant to the above definition, are defective and Bachmann shall be entitled to full warranty. Moreover, Supplier shall be obliged to indemnify Bachmann for all resulting damages.

## **§ 15 Miscellaneous**

- (1) Any specific contract and the legal relationship between Bachmann and Supplier resulting therefrom shall be governed by the material law – excluding the rules and regulations on conflict of laws – of the jurisdiction in which the relevant Bachmann entity has its principal place of business.
- (2) All disputes arising out of or in connection with any specific contract concluded between Bachmann and Supplier, including all amendments to it (if any), shall be adjudicated by the court which – according to the relevant EU-legislation – has jurisdiction over the Bachmann-entity having placed the Order.

Outside the scope of the before-mentioned legislation the parties agree to have the dispute finally arbitrated under the most recent version of the Rules of Arbitration of the International Chamber of Commerce/ICC (the “Rules”). Up to an amount in dispute of EUR 200.000 there shall be a single arbitrator appointed in accordance with the Rules; beyond that amount, there shall be a panel of three arbitrators appointed in accordance with the Rules. The arbitration seat shall be in Zurich, Switzerland; language of the proceedings shall be English.

In lieu thereof, Bachmann shall be entitled to file a claim with the *Landesgericht Feldkirch*, Austria, or any other court having jurisdiction over such dispute.

- (3) Supplier shall be entitled to name Bachmann as a customer only after Bachmann’s prior written request; this includes publications and other marketing activities which directly or indirectly make reference to Bachmann.
- (4) Supplier agrees to Bachmann being entitled to process any Supplier data in its IT systems.
- (5) Any change of contract requires the written form and signatures by authorized representatives of both Bachmann and Supplier.
- (6) In case one or several terms of the TCP are or become ineffective or unenforceable, this shall not affect the remaining part. In such a case, the ineffective or unenforceable term shall be deemed replaced by one that approximates the economic and legal effect of the original term as much as possible. Gaps in the TCP are to be filled in accordance with statutory provisions and/or industry practice.