

**General Terms and Conditions of Purchase**  
**Balcke-Dürr GmbH**  
as of January 2017

Purchaser's terms and conditions of purchase shall apply exclusively. Supplier's terms and conditions which deviate from Purchaser's conditions of purchase shall not be recognized by Purchaser unless Purchaser expressly consents to their validity in writing.

**I. Purchase Orders**

1. Purchaser orders shall be binding only if they are placed by Purchaser in writing. Verbal agreements - including subsequent amendments and additions to these terms and conditions of purchase - must be confirmed in writing by Purchaser for them to become valid.
2. For the period of their validity, cost estimates shall form a binding basis for resultant orders. They shall not be remunerated unless expressly agreed otherwise.
3. Documents used by Supplier in business dealings with Purchaser shall indicate at least: purchase order number, commission order number, plant, place of receipt, full article text/item description, volumes and volume units as well as VAT ID (for imports from the EU).

**II. Prices**

The prices are fixed prices. They are inclusive of everything Supplier has to do to fulfill supply/service obligation.

**III. Scope of Supply/Service**

1. As part of the scope of supply/service
  - Purchaser shall have the unconditional authority to carry out or have carried out by third parties repairs and modifications to the purchased supplies/services, and also to manufacture spare parts or have them manufactured by third parties;
  - Supplier shall transfer to Purchaser ownership of all technical documents (also for subcontractors) and other documents needed for manufacture, maintenance and operation and shall permit the Purchaser to use these documents for repair- and maintenance purposes or for the rework or manufacture of spare parts and to provide them to third parties. Said technical documents shall be in German – unless directed differently by Purchaser – and shall be based on the international SI standard system;
  - Supplier shall transfer all rights needed for the use, distribution or duplication of the supplies/services by Purchaser or by the companies affiliated with the Purchaser, however, considering any patents, supplementary protection certificates, brands, registered designs of third parties.
2. If the scope of supply/service is to differ from that agreed, Supplier shall be entitled to additional claims or schedule changes only if a corresponding supplementary agreement is concluded in writing with Purchaser prior to performance of the order.
3. The ordered volumes are binding. In the event of excess supplies/services, Purchaser shall be entitled to refuse these at the expense and cost of Supplier.
4. In the event of discrepancies between Purchaser and Supplier with regard to the scope of the supply/service, the Purchaser shall have an initial comprehensive right of instruction. Therefore, the Purchaser shall be entitled to give instructions to the Supplier that Supplier initially shall obey. Purchaser and Supplier will subsequently resolve the issue of a potential additional remuneration reasonably taking into consideration each other's interests.

**IV. Quality**

Supplier shall install and maintain a state-of-the-art, documented quality system of suitable type and scope. Supplier shall prepare records, in particular of quality inspections, and make these available to Purchaser on request.

Supplier hereby agrees to quality audits being carried out by Purchaser, Purchasers' customer or Purchaser's representative to assess the efficiency of said quality system. The Purchaser, respectively a third party acting on behalf of the Purchaser, may visit the Suppliers' premises, offices and facilities during normal business hours.

**V. Supply and Service Periods/Deadlines**

1. Agreed delivery dates are binding. In the event that agreed deadlines are not met, statutory provisions shall apply. Supplies/services provided before the agreed delivery dates shall entitle Purchaser to refuse supply/service until it is due.
2. The Supplier shall ensure that any deadlines contractually agreed between Purchaser and Supplier are being met. If Supplier becomes aware that an agreed deadline cannot be met, he must inform Purchaser in writing without delay, stating the reasons and the expected duration of the delay. Purchaser shall in any case have a comprehensive right to instruct the Supplier including but not limited to the right of requesting expediting measures. This right shall initially apply irrespective of the reason of a delay and irrespective of the question of the bearing of costs. Supplier shall initially follow these instructions. The Purchaser and the Supplier will mutually resolve the issue of the bearing of the related costs at a later date but as soon as reasonably possible and taking into account what has initially contractually been agreed and what has finally caused the expediting measures.
3. Purchaser shall be entitled to claim penalties of 0,1% of the Contract/Purchase Order Value for each started calendar day for which the supply/services is delayed beyond the agreed delivery dates, but shall not exceed 5% of the Contract/Purchase Order Value. Purchaser's rights to claim damages exceeding the maximum penalty amount remain unaffected. The supply of defective supplies/services shall be treated as if the supplies/services had not been supplied at that time.
4. Unreserved acceptance of the delayed supplies/services may not be construed as relinquishment or waiver of any compensation to which Purchaser may be entitled. Purchaser shall remain entitled to claim penalties until all outstanding payments owed by Purchaser for the supply/service have been made.

**VI. Shipment of Dangerous Goods**

1. The Supplier warrants having comprehensive knowledge about any risks that may arise from his goods on the occasion of their shipment, packing, storage etc. The Supplier is obliged to assess prior to his acceptance of any order if and to what extent the goods named in the order are to be considered as dangerous goods (e.g. paints and adhesives, chemicals, oxidizing, explosive, inflammable, toxic, radioactive, corrosive substances and/or substances or goods liable to self-heating.) In these cases the Supplier shall inform the Purchaser immediately and comprehensively. Supplier is obliged to provide Purchaser with the required declarations properly filled and legally binding signed at the date of his order acceptance at the latest.

**General Terms and Conditions of Purchase**  
**Balcke-Dürr GmbH**  
as of January 2017

2. For packing, marking and declaration Supplier shall take into account and obey the relevant national and international regulations in the most current version including but not limited to  
Sea Freight: Gefahrgutverordnung See  
Air Freight: IATA-DGR  
Rail, Road, Inland Waterways: GefahrgutVO Straße Eisenbahn, Binnenschifffahrt (GGVSEB)  
General: Gefahrstoffverordnung  
and any other deviating or additional regulations of any country of destination or transit.
3. Supplier shall be liable for any damage and loss arising from false or misleading indications in the aforementioned declarations or from Supplier's non-compliance of existing regulations with regard to treatment (packing, shipment, storage etc.) of dangerous goods.

#### **VII. Export License**

Supplier shall inform Purchaser at the date of the order acceptance at the latest, if and to what extent the order, as a whole or parts of it, requires state export licenses or similar legal or official requirements or whether the supplies are subject to export restrictions.

#### **VIII. Delivery/Performance and Storage**

1. Insofar as Supplier and Purchaser agree validity of one of the "Incoterms" of the International Chamber of Commerce (ICC) for the contract, the currently valid version thereof shall apply. They shall apply only insofar as they do not contradict the provisions of these general terms and conditions and other concluded agreements. Unless otherwise agreed in writing, the supply/service shall be delivered free carrier (Incoterms: FCA) to the place of delivery/performance or use indicated in the purchase order.
2. Supplies/services must be shipped to the addresses indicated. Delivery to/performance at a place of receipt other than that designated by Purchaser shall not constitute a transfer of risk to the Purchaser even if said place of receipt accepts the delivery/service. Supplier shall bear the additional costs of Purchaser resulting from the delivery being made to/service performed at an address differing from the agreed place of receipt.
3. Part supplies/services are not permitted unless Purchaser has expressly consented thereto. Part supplies/services are to be marked as such; delivery/service notes shall be submitted in one copy.
4. Purchaser is entitled to instruct Supplier at any time to postpone the delivery/provision of the construction site facilities and/or the erection up to a maximum of six (6) months from the originally agreed dates. In this case the contractually agreed dates and deadlines and subsequent dates are postponed accordingly. The Supplier shall not be entitled to additional remuneration, proven damages, compensation, or any other proven claims unless the postponement exceeds the maximum of six (6) months. Further, the Purchaser shall be entitled to at any time suspend the supply or the works already started. The Supplier undertakes to store the supply at Supplier's risk and costs for a suspension period up to a maximum of six (6) months.
5. If weighing is necessary, the weight determined on the calibrated scales of Purchaser shall apply.
6. Insofar as Supplier has the right to have the packaging needed for shipment/services returned, this shall be clearly marked on the delivery/service documents. In the absence of such marking, Purchaser shall dispose of the packaging at the cost of Supplier; in this case Supplier's right to have the

- packaging returned shall expire.
7. For the purpose of protection during transportation Supplier shall use its best efforts to employ biodegradable and/or recyclable packing materials of the lowest possible volume, which he shall take back upon the request the Purchaser and at its own cost.
8. Items needed for the fulfillment of an order may be stored on the premises of Purchaser in allocated storage areas only. For such items Supplier shall bear the full responsibility and risk of the entire order until the transfer of risk.
9. During transportation the statutory provisions, in particular the provisions of the law on the transportation of hazardous goods and the applicable hazardous goods directives including the respective annexes and appendices must be complied with.
10. The declaration of the goods in the consignment notes for shipment by rail shall comply with the valid provisions of the railways. Costs and damages incurred due to incorrect declaration or failure to declare shall bear the expense of Supplier.
11. Supplier shall have the receipt of deliveries confirmed in writing by the indicated place of receipt.
12. Supplier is obliged to obtain all necessary Supplier's declarations in relation to the supply and to provide the same to the Purchaser. If the final place of destination is a country with preference, the Supplier is obliged to provide a Supplier's declaration with a correspondent preference certificate. At the latest four weeks before the first contractually agreed shipment date, the Supplier transmits to the Purchaser the respective required Supplier's declaration for all goods to be delivered, as well as the longterm Supplier's declaration for goods with preferential origination status. All Suppliers' declarations must contain the type of goods, the respective commodity code and the country of origin. We will not accept any Suppliers' declaration with a comment such as „The undersigned represents to mark goods which are not originating in the country of supply in the delivery note or any invoice by the words ‚not an originating product“ .

#### **IX. Execution, Sub- Suppliers, Assignment**

1. Supplier shall not be entitled to transfer the execution of the contract in whole or in part to third parties.
2. Supplier is obligated to name his subcontractors to Purchaser on request.
3. Supplier shall not be entitled to assign his contractual claims vis-à-vis Purchaser to third parties or permit third parties to collect same. This shall not apply for legally established or uncontested claims.

#### **X. Termination**

1. Even in the event that the contract is not a work and services contract, Purchaser is entitled to terminate same in full or in part with immediate effect. In such an event, Purchaser is obligated to pay for all supplies/services completed up to then and make appropriate payment for material procured and work/services performed; in this case Art. 649, 2nd half of sentence 2 of the German Civil Code (BGB) shall additionally apply. Further claims of Supplier are excluded.
2. Purchaser is also entitled to terminate the contract if court insolvency proceedings are instigated in respect of the assets of Supplier or Supplier ceases payment. The same shall apply if Supplier does not meet the claims of his suppliers. Purchaser has the right to acquire material and/or semi-finished products including any special equipment on reasonable terms and conditions.

**General Terms and Conditions of Purchase**  
**Balcke-Dürr GmbH**  
as of January 2017

**XI. Invoicing, Payment, Set-off**

1. Payment shall be made as agreed. Any delivery/service effected before the agreed date shall not affect the payment period tied to this delivery date.
2. Supplier may only offset against uncontested or legally established claims.  
Also, any retention right may only be exercised on the basis of uncontested or legally established claims or rights.
3. Purchaser is entitled to offset receivables due to Supplier from Purchaser against all receivables due to Balcke-Dürr GmbH or companies in which Balcke-Dürr GmbH holds a direct or indirect controlling interest at the time of offsetting (German Group subsidiaries Art. 18 Stock Corporation Act (AktG)) from Supplier.
4. Payments by Purchaser shall be due upon complete and correct completion of the Contract/ Purchase Order and the receipt of an invoice according to Article 14 German VAT Act (UStG) within thirty (30) days net, alternatively within fourteen (14) days allowing a two percent (2%) discount.
5. In case the order is given with reference to a specific Project in which the Purchaser has agreed to a longer payment period with its international customer, it shall be agreed between Purchaser and Supplier that payments shall be paid within 60 (sixty) days net after complete execution of the order and after receipt of a correct invoice (according to § 14 UStG).

**XII. Claims under Liability for Defects**

1. Supplier guarantees that his supplies/services exhibit the agreed properties and fulfill the intended purpose. In the event that Purchaser incurs costs such as transport/travel, working and material costs or contractual penalties as a consequence of defective supplies/services, Supplier shall bear said costs.
2. The limitation period for defect liability claims shall begin with the full supply/performance of the scope of supply/service or, if acceptance testing is agreed, on acceptance.
3. The limitation period for defect claims is thirty six (36) months; longer statutory limitation periods shall remain unaffected by this. For newly supplied/performed or repaired parts, the period of limitation starts anew, insofar as the responsible party has not eliminated the defect expressly out of goodwill. Purchaser shall provide prompt notification of defects. The notification is deemed to be in good time insofar as it arrives at Supplier within a period of seven (7) working days of receipt of goods, or - for hidden defects - from the time of discovery. For defects notified within the limitation period, the period shall end no earlier than six (6) months after assertion of the notice of defects. Supplier shall not object on the grounds of delayed notification (Arts. 377, 381, par. 2 German Commercial Code (HGB)) for all other than obvious defects.
4. All deficiencies which are reported within the period of limitation shall be immediately remedied by the Supplier and not entail any expenses for Purchaser. The costs of remedying goods or supplying/performing replacements, including all incidental costs (e.g. freight) shall be borne by Supplier. If Supplier culpably fails to begin remedying the defect immediately or realize the supply/service as contractually agreed, Purchaser is entitled to carry out the necessary measures himself or have same carried out by third parties at the expense and risk of Supplier. In the events/as emergency where, due to particular urgency, it is no longer possible to inform Supplier of the defect and impending claim and set Supplier a deadline for redress, Purchaser shall be

entitled to eliminate the defects himself/have them eliminated or procure replacements at Supplier's expense. This shall not affect statutory rights of withdrawal, purchase price reduction or compensation for damages.

5. In the event of defects of title. Supplier shall hold Purchaser harmless from any claims arising from third parties.

**XIII. Place of fulfillment**

Place of fulfillment for all supplies/services shall be the place of receipt indicated by Purchaser.

**XIV. Prohibition of advertising/secretcy**

1. The use of Purchaser's inquiries, purchase orders and related correspondence for advertising purposes requires Purchaser's express prior consent in writing.
2. Supplier shall maintain secrecy vis-à-vis third parties in respect of all know-how, processes, inventions and all technical, commercial, operational, scientific data or any other kind of information, communicated to or otherwise become known to the Supplier, whether directly or indirectly, in writing, orally, electronically or in any other way of communication or detection in connection with Supplier's activities for the Purchaser. The obligation of maintaining secrecy applies to the same extent to Purchaser's customers' names and their confidential information. The obligation of confidentiality also continues after submission of the corresponding offers and after completion of the contract. Supplier shall impose corresponding obligations on his employees, who have a need to know to access the confidential information, and on his agents.

**XV. Indemnity and Insurance**

1. Supplier agrees to defend, indemnify and hold Purchaser and its directors, officers, employees, customers, affiliates, agents, contractors, successors and assignees harmless from and against any and all claims, liabilities, losses, damages, actions and expenses in connection with:
  - a) any breach by Supplier of its warranties, covenants or obligations hereunder;
  - b) any injury (including death), property damage, or economic loss arising out of or related to: (i.) defective or nonconforming goods or services supplied by Supplier, or (ii.) acts or omissions of Supplier or its employees or subcontractors in providing goods to or performing work, unless resulting from the sole negligence of Purchaser;
  - c) any failure to comply with applicable laws; and
  - d) any infringement or contributory infringement of a patent, trademark, copyright, or other proprietary interest by reason of the manufacture, delivery, license, use, or sale of the goods supplied or services performed under the Contract/Purchase Order ("Infringement").
2. Supplier shall provide worker's compensation, commercial general liability, automobile, public liability, and property damage insurance in amounts and coverage's sufficient to satisfy all claims hereunder. Such policies shall name Purchaser as an additional insured, shall be endorsed to be primary to any coverage provided by the other, and shall contain a waiver of any subrogation rights against Purchaser.

**XVI. Intellectual Property Infringement**

For any Infringement (as defined above), the infringing party shall, at the infringing party's expense, (i) obtain for the non-infringing party a perpetual, royalty-free license with respect to such item, or (ii) shall replace or modify

**General Terms and Conditions of Purchase**  
**Balcke-Dürr GmbH**  
as of January 2017

the item in a manner satisfactory to the non-infringing party, so as to avoid the infringement without any degradation in performance or (iii) replace the product(s) by comparable Products of equal value and functionality which do not infringe any Intellectual Property right of any third party. The infringing party's obligations shall apply even though the non-infringing party furnishes any portion of the design or specifies materials or manufacturing processes used by the infringing party. In case of any non-compliance with this clause, the Purchaser is entitled to terminate the contract and reclaim all funds already paid hereunder.

**XVII. Assertion of Claims**

The Supplier shall – analog sections 341, 640 of the German Civil Code – only be entitled to raise claims, which exceed the contractually agreed remuneration, or further claims in relation to the execution of the Contract if it expressly reserves such claims at the time of provision of the invoice (if it makes partial invoices the relevant time shall be the time of the final invoice). Such respective reservation requires that the Supplier clearly identifies and supports the claim by its nature and by its underlying facts and – to the extent possible – quantifies the amount of the claim.

**XVIII. Variations of Scope of Supply / Addenda**

Purchaser may request variations of the scope of supply from the Supplier unless this cannot be reasonably expected from the Supplier in an individual case. Supplier is obliged to comply with such reasonable request.

In this case Supplier shall be entitled to a reasonable adjustment of the remuneration and the time schedule.

The Supplier shall immediately submit an offer to Purchaser demonstrating the relevant adjustment of the Contract price and the delivery schedule. In the event Purchaser accepts the offer the Contract shall be considered as mutually adjusted.

In case Purchaser does not accept Supplier's offer Purchaser may nevertheless instruct Supplier to render the respective services. If Parties finally cannot mutually agree on an adjustment of the Contract price and the delivery schedule they shall resolve the dispute according to section XXIV of these terms.

Supplier shall – regardless the settlement of the dispute – entirely and in due time execute the amended scope of work and Supplier shall not be entitled to the right to retain performance or any similar rights.

**XIX. Data Protection**

Purchaser points out according to Art. 33 of the German Federal Data Protection Act (BDSG) that he will store data relating to Supplier on the basis of the German Federal Data Protection Act.

**XX. REACH clause**

Supplier must fulfill all specifications and measures resulting from the REACH directive for all materials, prepared materials and products supplied/provided to Purchaser.

**XXI. Health, Safety, Environment**

Supplier shall strictly comply with any health and safety regulations, regulations, either required by law and/or by employer's liability insurance association ("Berufsgenossenschaft") and/or with any other health and safety regulations applicable in the Purchaser's or

the End-Customer's business organization or applying to the respective single order or applying to the relevant countries affected. These regulations include in particular but are not limited to regulations with regard to security protection and occupational and fire safety. In this regard the Supplier shall inform itself about any applicable relevant safety regulation. Supplier shall further oblige its sub-suppliers – if any – to comply with the aforementioned regulations. Moreover, with regard to aforementioned regulations, Supplier shall ensure that its and its sub-suppliers employees will be comprehensively trained and instructed and will strictly obey said regulations.

If – in the reasonable opinion of the Purchaser – Supplier fails to obey aforementioned safety regulations, Purchaser may assign a safety expert for the account of the Supplier in order to ensure the compliance of the said regulations on site.

Purchaser further has the right to terminate the contract with the Supplier with immediate effect in the event of Supplier's substantial and/or repeated breach of the obligations (even though each of the repeated breaches itself is of minor character) of this article

**XXII. Additional Terms for Erection**

If and to the extent Supplier's services can be classified as erection services the provisions under this section XXII shall apply. Erection services are in particular services (e.g. erection, inspection commissioning) being at least partly executed by the Supplier at the place of destination (the erection site),

**a) Erection Site**

*[Only applicable, if Contract also includes erection work]*

The Supplier is obliged to obtain at its own expenses any knowledge required about the erection site and the purpose of the service, in particular about climate and environmental conditions in due time. Supplier cannot justify any delay and/or defects of its services in reference to missing knowledge with regard to above conditions.

**b) Scope of Erection Works and Execution**

*[Only applicable, if Contract also includes erection works]*

1. The Supplier is obliged to provide comprehensive and complete erection works even though partial services required for and related to the complete erection work are not completely contractually determined. Supplier is obliged and fully responsible to review and check any indications provided by the Purchaser with regard to the erection works.
2. Supplier remains fully liable for any and all of his works irrespective of the presence of Purchaser's site management or Purchaser's staff on site.
3. Supplier shall appoint a professional and experienced site manager who shall have comprehensive German language skills in the event the site is located in Germany, Austria, or Switzerland; otherwise the site manager shall have comprehensive English language skills. Supplier shall provide his site manager with sufficient power of attorney required for the works on site. Supplier shall inform the Purchaser in writing in advance about any replacement of the site manager. In the event of an important reason by reference to the person of the site manager the Purchaser may instruct the Supplier to immediately replace the site manager at Supplier's own expense.
4. Any Supplier's direct consultations and agreements between Supplier, Purchaser's customer and any other erection company on site that are related to Supplier's services are subject to Purchaser's prior approval.

**General Terms and Conditions of Purchase**  
**Balcke-Dürr GmbH**  
as of January 2017

5. Supplier is obliged to coordinate its works with other supplier's on site if and to the extent required by the complete construction or instructed by Purchaser's site management. Purchaser may require Supplier to permit a shared use of scaffolding, devices, tools, etc. by other suppliers against remuneration. In the event of concurrent work by different suppliers, Supplier shall coordinate the work disposition in order to avoid a disorder of mutual interests. Supplier shall not be entitled to claims for obstacles or reimbursement due to work obstructions by other suppliers or Purchaser's customer.

**c) Erection Acceptance**

*[Only applicable, if Contract also includes erection works]*

1. The acceptance date will be determined upon Supplier's written request as well as Purchaser's confirmation and taking into account Purchaser's interests.
2. In the event the Purchaser, Purchaser's customer or an acceptance authority have noted defects prior to the acceptance of the works, the Purchaser may postpone the acceptance date until such defects are remedied.
3. The commissioning of the works performed in whole or parts or any payment by the Purchaser shall not be qualified as an acceptance in legal terms.
4. The material costs of the acceptance inspection will be borne by the Supplier. Purchaser and Supplier shall each bear their personnel expenses.

**XXIII. Severability and written form**

If individual provisions of the conditions are or become entirely or partly invalid, the contract as a whole and the other remaining provisions shall remain valid.

To the extent a Party has to send any notification or declaration according to the contract or these terms and conditions to the other Party in writing, these declarations may also be served in *Textform* (§ 126 BGB), for example via email.

**XIV. Applicable law**

All legal relations between Purchaser and Supplier shall be governed by the prevailing material law of Switzerland to the exclusion of the United Nations' Convention of April 11, 1980 for International Sale of Goods (CISG) and to the exclusion of the International Private Law in their currently valid version. Place of jurisdiction shall be Zurich, Switzerland.

If Purchaser's and Supplier's respective places of business are not located in Switzerland but in the same third country, all legal relations between Purchaser and Supplier shall – in deviation of the previous paragraph – be governed by the law of this place of business. In this case place of jurisdiction shall be Purchaser's place of business.

If and to the extent another law than German law applies according to section XIV of these terms, the German legal provisions which are referred to in these terms shall apply by analogy.

**Version of January 2017**