General Purchase Terms

§ 1 General – Validity

(1) Our General Purchase Terms are exclusively valid as far as our written purchase order does not contain any deviating terms and conditions. We do not accept contrary terms or terms of the supplier deviating from our General Purchase Terms, except when explicitly agreed to by us in writing. Our General Purchase Terms are even valid if we, despite of having knowledge of contrary or deviating terms of the supplier, accept his supply without reservations.

(2) Only written and legally signed orders or agreements are binding. Collateral agreements and alterations to the individual contract are only binding upon written confirmation.

(3) Our General Purchase Terms are valid only for companies in the sense of § 310 clause 1 in connection with clause 4 BGB (German Civil Code).

(4) Our General Purchase Terms also apply for all future business with the supplier.

(5) Unless otherwise agreed, the respectively latest edition of Incoterms established by the International Chamber of Commerce shall govern the interpretation of the customary trade terms.

§ 2 Quotation – Quotation Documents

(1) The supplier is obliged to accept our purchase order within a period of 2 weeks.

(2) For schemes, drawings, calculations and any other documents we reserve the right of property and copyright. These documents shall not be made available to third parties without our prior written agreement. They are exclusively determined for the manufacture in accordance with our order. After order termination, they have to be sent back to us without prior request. They must be kept confidential to third parties; the covenant in § 10 section (4) shall also apply.

§ 3 Prices – Payment – Delivery

(1) The price stated in our purchase order is binding and valid with the addition of the legal Value Added Tax.

As far as not otherwise agreed in writing, payment is executed as per our choice within 14 days upon receipt of the invoice with 2 % deduction or net within 30 days upon receipt of the invoice.

(2) As far as not otherwise agreed in writing, the price includes delivery CPT.

(3) The invoices issued by the supplier have to contain all obligatory statements as per the Tax Amendment Act 2003.

(4) Invoices will only be settled by us if, according to the regulations of our purchase order, our purchase order number is stated; if this obligation is not fulfilled, the supplier will be held responsible for all resulting problems, as far as he cannot prove that he is not responsible.

(5) We are entitled to set off all the claims the supplier may have against us against all claims we may have against the supplier.
§ 4 Delivery Date

(1) The delivery date stated in the purchase order is binding.
(2) The supplier is obliged to inform us in writing on any delay of his delivery/services which may occur, by stating the reasons for and the assumed duration of this delay. If the reason for the delay is beyond the supplier’s control, the supplier may invoke such reason only if he has met his obligation to notify us in due time.
(3) In the event of delay in delivery, we shall be entitled to statutory claims. We are especially entitled, besides a claim due to delay of delivery/services after vain expiration of an adequate period of time given to the supplier, either to cancel the order and/or to recover damages instead of delivery/services. We are entitled to these rights referring to the entire scope of contract, if the delivery/services is/are partly not effected after expiration of the grace period and if the partial execution is of no interest for us. The latter is not valid if in individual cases the supplier was entitled to make partial delivery/services.
(4) The acceptance of delayed deliveries does not constitute a waiver for compensation for damages due to delay of delivery/services.
(5) Even if the supplier cannot be held responsible for the delay, we have – in urgent cases (e.g. to keep our own binding delivery schedule) - the right of rescission from the contract upon expiration of the grace period.
(6) Partial delivery is not accepted as far as not otherwise agreed in specific cases.
(7) In case of delivery ahead of schedule, as far as not agreed otherwise with us in writing, we reserve the right of a correspondingly later payment of the order value or to return the goods at the expense of the supplier to the supplier’s address.
(8) In the case of delay, we are entitled, in addition to possible damages, to claim a contract penalty of 0.5 % per week, up to maximum 5 % of the order value. We are obliged to notify the supplier of the reservation of the penalty within 15 working days after acceptance of the delayed delivery.

§ 5 Cancellation

(1) We have the right to terminate the contract in full or in part. In such an event, we are obligated to pay for all supplies/services completed up to that point as well as to appropriately remunerate material procured and work performed. In this case, § 649, p. 2, 2nd half-sentence BGB (German Civil Code) is applicable, stating that the supplier has to take into account the amount which he saves in costs through rescission of the contract or which he acquires - or wilfully fails to acquire - through other use of his working resources. Any further-reaching claims of the supplier are excluded.
(2) We are also entitled to cancel the contract if insolvency is filed against the supplier’s assets or the supplier ceases his payments. The same applies if the supplier does not fulfil his obligations towards his sub-suppliers. We have the right to take over material and/or semi-finished goods, incl. type specific tools, at appropriate conditions.
(3) In case of a cancellation of the contract, the supplier is obliged to return all equipment and tools provided by us without delay.
§ 6 Risk Transfer – Documents – Transportation

(1) As far as not agreed otherwise, the delivery shall be made CPT place of destination.

(2) The supplier is obliged to state our exact purchase order number on all shipping documents and delivery notes. If he does not fulfil this obligation, we cannot be held responsible for the resulting delays in processing.

(3) The safe loading of the goods for transport, inclusive of the securing of machine internal movable items, forms part of the scope of supply and services of the supplier, independent of the agreed price terms.

With regard to the packaging, the supplier has to adhere to the legal regulations, especially to the valid packaging instructions. If the supplier requests the return of the packaging material, this has to be clearly stated on the shipping documents. The return is executed at the cost of the supplier.

(4) The risk is transferred to BWG as soon as the goods have been handed over to BWG or its authorised representative at the point of destination.

If BWG or its authorised representative assists the supplier in the fulfilment of the contract, they act as vicarious agents of the supplier only. This is also valid if, in specific cases, delivery ex works has been agreed upon or if we carry out the shipment or have it carried out at our own expense.

§ 7 Investigation of Faults and Defects – Warranty

(1) The supplier guarantees that his supplies and services are of the stipulated and customary quality and conform to accepted rules and state-of-the-art technology as well as to the legal requirements of environmental protection and occupational safety (accident prevention regulations, etc.) and that the goods do not have any faults or defects which reduce or eliminate their value or suitability for normal use or for the use assumed at the time of the order. The supplier has to constantly check the quality of his contractually stipulated supplies.

(2) We will check the goods supplied to us within an adequate period of time for apparent damages/defects and/or for recognisable deviation in quality and quantity. In case of a defect, we will inform the supplier in form of a defect complaint. Furthermore, we will report the defects within 1 week from the date of their detection, within the scope of proper business proceedings.

(3) The warranty period for the supplied equipment is 24 months (for day and night operation), starting from the date of commissioning; however, at the longest 30 months after delivery.

(4) We are entitled to make statutory claims for defects with no limitation. In any case, we are entitled to request from the supplier as per our choice and at no cost to us either the elimination of the defect (remedy) or the supply of defect-free items (replacement), free at place of use, incl. installation. The right to claim damages instead of performance remains explicitly reserved.

(5) If the supplier does not fulfil his warranty obligations, or if the rectification or replacement delivery fail, or in case of urgency, we have the right of remedying the defects ourselves, if the supplier has been informed about the defect.

(6) In case of replacement deliveries, the 2-year warranty period begins on the date of the replacement delivery.

(7) In case of payment of damages instead of performance, the supplier is liable for all indirect and direct damages resulting from the defects.
§ 8 Product Liability – Indemnity against Liability – Liability Insurance

(1) As far as the supplier is liable for a product damage, he is obliged to indemnify us against liability claims by third parties at first request, if the causes of the damage fall within his scope of control and area of organization and if he is himself liable to third parties.

(2) Within the framework of his liability for claims referred to under item (1), the supplier is also obliged to pay for possible costs as per §§ 683, 670 BGB (German Civil Code) and as per §§ 830, 840, 426 BGB (German Civil Code).

(3) The supplier undertakes to maintain adequate insurance coverage for all risks in accordance with this § 8. Upon request by us, he shall provide proof of this insurance.

§ 9 Protective Rights – Defect of Title

(1) The supplier guarantees that in connection with his supply/services, no rights of third parties are infringed.

(2) If any such infringement is claimed by a third party, the supplier is obligated to hold us free of any such claim upon first written demand. We are not entitled to enter any agreement with a third party without the permission of the supplier, and especially not to reach a settlement.

(3) The supplier’s obligation to provide a release includes all the expenses which we necessarily incur through or in connection with a claim asserted by a third party.

§ 10 Proprietary Rights – Free Issue – Tools – Confidentiality – Approvals

(1) As far as we provide any free issue items to the supplier, we reserve the proprietary rights to them. All further manufacture or modification of these items by the supplier is executed for us. If our free issue items are processed together with other materials which are not ours, we gain the joint ownership of the new component up to the value of our free issue portion (purchase value plus VAT) at the time of processing.

(2) If our free issue items are inseparably joined, combined or mixed with other items which are not ours, we will gain the joint ownership of the new component up to the value of our free issue portion (purchase price plus VAT) at the time of mixing. If the mixing takes place in such a way that the component of the supplier remains the main component, it is agreed that the supplier transfers to us a partial joint ownership; the supplier keeps the sole ownership or the joint ownership for us.

(3) We reserve the right of ownership to tools and equipment. The supplier undertakes to use the tools solely for the manufacture of the goods we ordered. The supplier is obliged to insure at his own expense the tools belonging to BWG at their original value against fire, water and theft. At the same time, he assigns to us all claims from this insurance; we herewith accept this assignment. The supplier is obliged to inspect, maintain and if necessary repair the tools provided by us at his own expense in due time. Incidences, failures and malfunctions which may occur have to be reported to us immediately. If the supplier culpably fails to do so, the damage compensation claims will remain unaffected.

(4) The supplier undertakes to use documents and information of any type, incl. drawings, DXF or DWG files and documentation which are originated by BWG, BWG’s customers or third parties, only for the execution of this order. These documents and information shall not be given, shown, made available or transmitted in writing, orally or in any way to third parties, neither partly or extractions thereof, without the prior written permission of BWG. We reserve all property and proprietary rights in figures, drawings, calculations and other documents.
To the extent that our securities as per paragraphs 1 and/or 2 hereof exceed the purchase price of all unpaid goods under our retention by more than 20%, we are obliged to release these security rights upon request of the supplier at our discretion.

BWG’s review and/or approval of any data sheets, dimension sheets, drawings, concepts, specifications or other documents of the supplier, or any part thereof, does not relieve the supplier from the full responsibility for the design and execution or from any other obligation set forth in the contract, including applicable warranties and assured properties.

§ 11 Assignment of a Claim – Execution of the Contract by Third Parties

(1) An assignment of claims against us to third parties is not allowed without our explicit written permission.

(2) Without our explicit written permission, the supplier is not entitled to transfer the execution of the order to third parties, neither totally nor partly. The only exception is the purchase of necessary material resp. standard and special items. Even if this permission is granted, the supplier remains liable to us for the fulfilment of the contract. The names of the sub-suppliers have to be stated in the order acknowledgement. The order transfer to third parties without our written agreement entitles us to damages.

§ 12 Export Control

(1) The supplier assures that he has observed all applicable export regulations relevant for him prior to delivery and that neither export embargos nor export authorization requirements were disregarded. The supplier is liable towards BWG to provide all relevant information regarding the composition and origin of the goods he delivers which are necessary to comply with export and re-export regulations. In particular, he undertakes to disclose any listing of his products in the Lists of Goods of the E.U., Germany or the U.S.A.

§ 13 Force Majeure (Act of God)

(1) War, labour disputes, monetary or commercial policy measures or other events subject to Force Majeure or non-delivery of material without our fault entitle us to defer the acceptance resp. receipt of ordered goods by the duration of the obstruction plus a reasonable start-up period. If we loose our interest in the supply due to the hindering event (e.g. because we cannot keep our obligation against third parties), we have the right of rescission – to the exclusion of possible damage claims of the supplier.

§ 14 Place of Jurisdiction – Place of Contracting

(1) The place of performance for deliveries and services is the place of destination specified by us.

(2) The contractual relationship is governed by German law. Provided that the supplier is a registered trader, the place of jurisdiction is our registered office; however, we are entitled to sue the supplier before another court.

(3) If a provision is or becomes ineffective, this does not influence the validity of the other provisions. The parties are obligated to replace the ineffective provision by an effective one which comes closest to the commercial purpose of the Contract.
§ 15 Radiation Protection

(1) The supplier warrants that the supplies are free of substances requiring special handling / use and are not subjected to mandatory labelling and identification as defined in the relevant national (esp. Radiation Protection Ordinance, Law on the Protection against Radiation and Decree on Natural Sources of Radiation, in their respective latest applicable version) and international as well as European radiation protection provisions. Further, the supplier guarantees that permitted radioactive substances comply with the maximum permissible values defined in Directive 96/29/Euratom Council dated May 13, 1996 and have not been manipulated resp. deliberately modified to comply with the allowed permissible values.

(2) The supplier is liable to the customer, without any limitation of liability, for all damages (especially all costs resulting from emergency procedures and subsequent damages of all kind) that the customer would have to bear resulting from the supply of contaminated material, i.e. substances that do not comply with the specifications mentioned in the previous paragraph.

§ 16 Adherence to Social Standards and to Corporate Compliance Guidelines

(1) We commit ourselves and require our suppliers to take active ethical and social responsibility in line with the SA8000 of the Social Accountability International (SAI). This standard comprises the compliance with legal regulations; the prevention of child and forced labour as well as of discrimination and disciplinary sanctions; the respect of human rights as proclaimed by the UN; the provision of a safe and healthy work environment, the promotion of employee participation as well as compliance with regular working hours and a fair remuneration.

(2) We stand against corruption and bribery and commit ourselves and require our suppliers to observe the corporate compliance guidelines as well as, in particular, laws and regulations. In this way, we promote clean and good business practices as well as fair competition. The supplier therefore assures to abstain from committing any act or to abstain from any omission that – notwithstanding the nature of his participation - could be subject to legal prosecution or criminal punishment of the supplier, any person employed by the supplier or third party contractors, especially for corruption or violation of cartel and competition laws (in the following referred to as “violation” or “violations”). The supplier is obligated to take appropriate measures to avoid violations. The supplier shall oblige his employees or third party contractors accordingly.

(3) In case of a violation, we are entitled to demand from the supplier the immediate cessation and the compensation of all resulting damages.

§ 17 Environmental Protection

(1) The supplier shall guarantee compliance with environmental protection management in accordance with ISO 14001, whereby in particular environmentally friendly and resource-friendly work shall be carried out in compliance with the statutory requirements.
§ 18 Electronic Data Processing

(1) We are entitled to process person-related data obtained within the scope of the business relation as defined in the Federal Data Protection Act.

Last revision: January 2019

B W G
Bergwerk- und Walzwerk-Maschinenbau GmbH