

General Terms and Conditions of Purchase for Services for all German companies of the Bühler group

I. Scope and definitions

1. The present General Terms and Conditions of Purchase for Services (hereinafter "GTCPS") of the German Bühler companies shall govern the conclusion, content and execution of all contracts (hereinafter "service contracts") for rendering services (hereinafter "services"). They shall apply exclusively; Bühler shall not recognize any contradictory terms and conditions of the supplier or terms and conditions which deviate from these Terms and Conditions of Purchase unless Bühler has explicitly approved their validity in writing. These Terms and Conditions of Purchase of Bühler shall also apply if Bühler accepts the execution of the contract and/or service of the supplier without reservation in the knowledge that the supplier's terms and conditions conflict with or deviate from these Terms and Conditions of Purchase.
2. All agreements which are reached between Bühler and the supplier for the purpose of executing this contract shall be recorded in writing in this contract.
3. The present Terms of Purchase and Procurement shall only apply towards entrepreneurs according to § 310 I BGB [German Civil Code].
4. The legal character of the service, regardless of its designation in the contract, shall be determined by its content which, at the same time, defines the success owed under the contract.

II. Parts of contract and priority

In case of a conflict between parts of the contract, the following order shall apply:

- a) service contract
- b) the present GTCPS
- c) further annexes to the service contract as per their enumeration in descending order of priority.

A modification to a superordinate document requires an explicit reference to the superordinate clause(s). The supplier's general terms and conditions of business shall be excluded and their validity shall hereby be rejected unless they have been expressly accepted by Bühler in writing as forming an integral part of the contract.

III. Conclusion of contract

Quotations from the supplier shall be binding for the supplier and shall not be remunerated. Service contracts as well as modifications and amendments thereto shall only become effective upon written confirmation by Bühler.

IV. Object of contract

The object of contract shall comprise the services to be rendered by the supplier including possibly required supplies (e.g. installation material or the like). Moreover, all further services required for proper rendering of the services shall be included without additional remuneration, even if these are not listed in detail in the service contract. The above is collectively referred to as «services» within the present Terms and Conditions of Purchase for Services.

V. Fulfillment of the services

Bühler shall determine the place of fulfillment. Benefit and risk will pass to Bühler only after acceptance confirmed in writing by Bühler at the place of fulfillment.

Premature fulfillment of the services shall be coordinated with Bühler in due time.

VI. Delay

The supplier shall immediately inform Bühler if circumstances become known that fulfillment deadlines might possibly not be met. If the supplier fails to meet the agreed deadlines, he shall be in delay without a reminder.

If the supplier is in delay, a penalty of 1% of the contract value per commenced week, up to max. 5% of the contract value, shall be paid to Bühler.

Bühler expressly reserves the right to assert further damages or further rights (including waiver of delivery without setting a deadline).

VII. Inspection of the services and complaint (notice of defect)

Bühler shall only be obliged to perform a visual inspection of the services at the time of fulfillment / acceptance.

The supplier shall explicitly waive the objection to a delayed notice of defect. Bühler may lodge a complaint at any time within the liability period for defects. In particular, a payment made by Bühler shall not constitute an approval or acknowledgement of freedom from defects.

If the supplier becomes aware of any defects, he must notify Bühler of them without delay.

VIII. Defect-related rights

The supplier shall guarantee that all services comply with state-of-the-art technology, the relevant legal provisions and the regulations and guidelines of authorities, trade associations and professional associations. If deviations from these regulations are necessary in individual cases, Bühler's written consent shall be obtained by the supplier in this respect. Claims for defects on the part of Bühler shall not be restricted by such consent. If the supplier has concerns regarding the type of execution requested by Bühler, he must inform Bühler of this in writing without delay.

In case of deficient services, Bühler shall be entitled to the following rights without any restriction to the legal or otherwise agreed regulations (such as in a quality agreement):

Should it become apparent that the supplier's services are deficient, the supplier shall either remedy such defects within a reasonable period of time at his own expense or, at Bühler's discretion, render his services again free of defects.

If the supplier does not remedy the defects despite a reasonable period of grace, or if the supplier fails to render the services again free of defects, or if the service can neither be remedied nor repeated due to its nature, Bühler may withdraw from the contract or reasonably reduce the remuneration or remedy the defect or have it remedied at the supplier's expense and claim damages instead of the service.

Insofar as the defect is evident in the documentation provided by Bühler, the supplier shall acknowledge the documented deficient service accordingly.

Bühler shall be entitled to carry out remedy of defects on its own or have it carried out by third parties at the supplier's expense if there is imminent danger and/or there is a particular urgency and/or the defect is obviously minor.

Bühler shall send to the supplier a report on the type and scope of the defects and the work performed.

Insofar as the services to be rendered by the supplier include deliveries, the supplier shall bear all costs of subsequent performance incurred worldwide, in particular costs of troubleshooting, retrofitting costs, dismantling and reinstallation costs, transport, travel, labor and material costs as well as customs duties.

The freedom from defects shall apply to a 24-hour operation on 365 days per year for 24 months. The liability period for defects shall count from the acceptance by Bühler, but not longer than 36 months after completion of the services by the supplier, whichever happens first.

The liability periods for defects shall start anew as soon as a defect has been remedied.

Bühler reserves the right to assert further claims.

IX. Prices and payment

Unless otherwise agreed in writing, the contractually agreed prices shall include all costs such as insurance costs, allowances, travel costs, license fees as well as public charges and customs duties.

Provided that the services have been rendered in accordance with the contract and the legal provisions, the invoice will be due for payment 60 (sixty) days after receipt. If Bühler objects to an invoice in good faith, the payment period shall be interrupted to the amount of the sum objected to, until the objection has been clarified.

For the supplier, an off-set declaration and off-set plea shall be excluded.

X. Right to refuse service, retention right and right of withdrawal

Irrespective of the circumstances, the supplier shall expressly waive any kind of right to refuse service performance, retention right or right of withdrawal from the contract towards Bühler.

If the service includes any deliveries and Bühler has a reason to reject the service or has claims against the supplier for poor service performance, Bühler shall be entitled to retain and offset the payment for the ancillary service to secure its own claims against the supplier.

XI. Involvement of third parties

The supplier shall be allowed to involve third parties for the fulfillment of essential parts of the contract only with the prior written consent by Bühler.

In such a case, the supplier shall be obliged to ensure that the third parties involved by him in the fulfillment of the contract will be assigned and fulfill the essential obligations from the service contract, in particular the obligations from sections 15 (Code of Conduct / Legal Compliance) and 19 (Secrecy).

Irrespective of Bühler's consent, the supplier shall remain fully responsible for the contractual services rendered by third parties.

XII. Insurances

The supplier shall maintain a suitable insurance for the duration of his contractual obligations in order to adequately insure the liability risks in connection with rendering of the services. Upon request, the supplier shall present to Bühler a written insurance certificate confirming the sufficient insurance coverage.

XIII. Documentation and return

All contract-specific documents such as drawings, specifications, test plans, test records, etc. must be kept for a period of 13 (thirteen) years.

If they are no longer required for the fulfillment of the contract, the supplier shall return all documents and materials from Bühler to Bühler and delete or destroy copies in compliance with the data protection law.

XIV. Code of Conduct / Legal compliance

The supplier shall commit and ensure that his employees, directors, representatives, agents and sub-suppliers understand and adhere in all respects and at all times to the principles set forth from time to time in the Supplier Code of Conduct of Bühler and in the Bühler Minimum Occupational Health and Safety Requirements.

The current valid version of the Supplier Code of Conduct and the Bühler Minimum Occupational Health and Safety Requirements is accessible on the Bühler homepage www.buhlergroup.com/suppliers.

Furthermore, the supplier shall commit and ensure that his employees, directors, representatives, agents and sub-suppliers will comply with all applicable legal requirements, whether local or foreign, including but not limited to any laws prohibiting corruption and bribery as well as with the Anti-Bribery and Anti-Corruption Rules of Bühler. Prohibited shall be in particular:

- Payments for undue services.
- Payments for unaccounted services.
- Payments aimed at accelerating a process ("facilitation payments").
- Payments without evidence of a receipt.
- Commissions not reflecting market conditions.
- Gifts (goods, entertainments, cash disbursements).
- Over-invoicing and under-invoicing.

The supplier himself shall be responsible for ensuring compliance with the applicable legal provisions and official regulations as well as with the applicable safety and damage prevention regulations. This shall also include in particular the obligation to comply within his organization, including his vicarious agents, with the laws for the protection of people and the environment in the entire supply and service chain at home and abroad, in particular the German Supply Chain Act (LkSG). Furthermore, the supplier shall obtain the permits required for the services on his own responsibility and at his own expense, if necessary.

XV. Export and import

The supplier shall comply with all requirements of the applicable national and international customs and foreign trade law (hereinafter "foreign trade law"). The supplier shall provide Bühler as early as possible the documentation that Bühler needs for compliance with the foreign trade law, however at the latest upon fulfillment of the services and, in the event of changes, without delay.

XVI. Liability and indemnification

The supplier shall be liable for any direct and indirect damage (including damage as a consequence of defects) incurred by Bühler as a result of a breach of the contractual and/or legal obligations by the supplier and/or the services. If a claim is asserted against Bühler by an end customer due to a fault for which the supplier is responsible (e.g. damage or consequential damage due to faulty services), the supplier shall be obligated to indemnify Bühler for any costs resulting therefrom (incl. reasonable court and attorney's fees) and to support Bühler (e.g. as an intervenor) in any (court) disputes.

If an injured party asserts a claim under domestic or foreign law against Bühler based on product liability, the supplier shall be obliged to indemnify Bühler against such damage claims upon first request, if the cause lies within the supplier's area of control and organization and the supplier himself is to be held or would be liable in the external relationship. The same shall apply to any recall actions.

The supplier shall be liable for the conduct of group companies, auxiliary persons and involved third parties in the same way as for his own conduct. The liability on the part of Bühler shall be limited to such damage resulting from unlawful intent or gross negligence and to property damage and personal injury. Any further liability on the part of Bühler shall be excluded to the extent admissible by law.

XVII. Force Majeure

In cases of Force Majeure (strikes, epidemics and pandemics, political unrest, official measures, severe weather, flooding, fire, other natural disasters, and other events beyond the control of Bühler), Bühler shall be entitled to withdraw from the service contract in whole or in part against payment of the costs incurred by the supplier to date.

XVIII. Secrecy

Without prior consent in text form from Bühler, the supplier shall treat all information and data from Bühler that is not publicly accessible as strictly confidential during the term of contract and thereafter and shall undertake to use it exclusively for the proper fulfillment of the contract. The supplier shall bind auxiliary persons and other third parties to the same degree. For each violation of the secrecy obligation, the supplier shall pay a penalty of five times the order value, but not more than EUR 25,000.00 (twenty-five thousand EUROS). Bühler reserves the right to claim further damages and may claim cumulatively. Payment of the contractual penalty shall in no case release the supplier from further compliance with the secrecy obligation.

XIX. Intellectual property to services

If the rendering of services includes the creation of works in terms of the applicable law, all rights, to the extent permissible under applicable law, shall pass to Bühler for exclusive use when the services are rendered. In the case of software developments, this shall include the object code, the source code, the complete developer documentation, and a list of the open-source software used, including the applicable license terms and conditions. In any case, the use of open-source software requires the prior written consent from Bühler.

To the extent deemed necessary or useful for the intended purpose, Bühler shall have the irrevocable, gratuitous, and unlimited right to use all systems, programs, standard software, and documents as well as all know-how and all other property rights associated with or contained in the services worldwide (including the right to grant sublicenses).

The supplier shall ensure that no patent rights or any other rights of third parties will be infringed by the delivery or use of the services, and that he will not infringe any patents or property rights of Bühler nor encourage any such infringement.

In the event of an infringement to patent or other third-party rights, Bühler may, at its discretion and irrespective of the supplier's fault, demand the following from the supplier: i) that the supplier provides Bühler and Bühler's end customer with the right of use at his own expense, or ii) that the supplier modifies or replaces the services or parts thereof at his own expense so that the services no longer infringe third-party rights, provided that such modifications do not have any negative impact on the services and the use thereof, or iii) that the supplier reimburses the price plus interest. In any case, Bühler shall be entitled to additionally assert claims for damages irrespective of the fault of the supplier.

XX. Property rights

1. The supplier shall be responsible that no rights of third parties, in particular property rights and applications for property rights will be infringed in connection with his services within the Federal Republic of Germany. By submitting the technical documentation, the supplier grants Bühler the unrestricted, economic right of use and exploitation with regard to the further use of these documents for the creation of documentation in connection with machines/plants produced or distributed by Bühler.
2. If a claim is asserted against Bühler by a third party for this reason, the supplier shall be obliged to indemnify Bühler against such claims upon first written request.
3. The supplier's obligation to indemnify shall relate to all expenses necessarily incurred by Bühler from or in connection with the claim by a third party.
4. The prescription period shall be ten years, starting from contract conclusion.

XXI. Intellectual property of Bühler

Bühler shall retain all rights to the supplied plans, Bühler instructions and manuals, technical documents, samples, means of production such as models, dies, tools, computer software, etc. These must neither be made accessible to third parties, nor copied, nor used outside the scope of fulfillment of the contract.

XXII. Advertising

The use of services rendered under a service contract and referencing to the business relationship with Bühler for advertising purposes shall only be permitted with the prior written consent by Bühler. Bühler may revoke its consent for advertising purposes at any time and without giving reasons. In such case, the supplier shall be obliged to take all the measures immediately and at his own expense for removing the reference as soon as possible.

XXIII. Data protection and IT safety

The supplier shall take appropriate organizational and technical measures in order to ensure the confidentiality, authenticity, integrity, and availability of the delivered software as well as of his own IT systems, insofar as data from Bühler are processed on them.

The supplier shall acknowledge and agree that Bühler shall be allowed to have access to personal data (i.e. information about identified or identifiable natural persons such as names, functions or contact details) of the supplier's employees, agents, consultants, contractors and other staff members. This personal data may be processed by or on behalf of Bühler in accordance with Bühler's Privacy Policy, being available here www.buhlergroup.com/privacy, in order to assume and / or fulfill rights and / or obligations arising from this contractual relationship to which these GTCPS shall apply, as well as related purposes, including, but not limited to, order processing and payment processing, customs and import / export management, supplier relationship management, accounting and general administration purposes. The parties agree that they shall act as independent responsible parties (in terms of the applicable law) regarding the personal data processed pursuant to this clause. Furthermore, the supplier shall undertake to inform his personnel that Bühler shall be authorized to process personal data and, if necessary, to obtain valid permission to do so. He shall particularly point out the right of Bühler to transfer personal data to third parties or third parties abroad while maintaining a comparable level of data protection.

XXIV. Final provisions

Assignment: The assignment of rights and obligations under the service contract by the supplier to a third party requires the prior written consent by Bühler unless the applicable law stipulates mandatory provisions to the contrary. Bühler may assign rights and obligations under the service contract in accordance with the law.

Severability clause: If individual provisions of the service contract or of a purchase order prove to be invalid or unlawful, the validity of the remaining provisions of the contract shall not be affected. These provisions shall be replaced by the parties with a valid one that comes closest to the original meaning and economic circumstances.

Contract adaptation: Modifications to the service contract must be made in writing and signed by both parties. A waiver of this written-form requirement is only possible in writing.

Communication: Notifications in text form may also be submitted digitally. Notifications in written form must be submitted on paper.

Place of jurisdiction and applicable law:

1. The exclusive place of jurisdiction shall be the headquarters of Bühler; however, Bühler shall also be entitled to file action against the supplier at the court of jurisdiction at his registered seat of business. For legal actions against a supplier not having a general place of jurisdiction in the Federal Republic of Germany, the additional place of jurisdiction, besides the legal places of jurisdiction, shall also be the headquarters of Bühler. Arbitration agreements reached by the parties shall have precedence.
2. The law of the Federal Republic of Germany shall apply to all legal relationships arising from this contract and to any ancillary and follow-up business; the applicability of the UN Convention on the International Sale of Goods shall be excluded.