

# **General terms and conditions of purchase of Walter Bösch GmbH & Co KG (FN 12924g, LG Feldkirch) Industrie Nord, A-6890 Lustenau**

## **1.) General provisions**

The following general terms and conditions of purchase apply to all orders made by Walter Bösch GmbH & Co KG – hereinafter referred to as bösch. We shall not accept any contradictory general terms and conditions of the supplier. Any deviations in the order confirmation shall only apply if they have not been expressly cancelled/withdrawn/revoked in writing by bösch. The execution/performance/implementation of the order is deemed as recognition of these general terms and conditions of purchase. Orders, order confirmations and delivery schedules require the written form. The requirement of the written form is fulfilled if the communication is by fax, email or any other means of electronic data interchange (EDI). This also applies to changes and supplements. Orders shall be confirmed immediately in writing. The prices quoted in the order are absolute fixed prices.

## **2.) Offers/quotations and offer/quotation documents**

bösch may not incur any costs as a result of offers/quotations or samples provided. Drawings, designs, models, samples, manufacturing instructions, etc., which bösch has delivered to the supplier for the purpose of submitting a quotation or for the implementation of an order, shall, however, remain the sole intellectual property of bösch and may not be used for other purposes, or duplicated or made available to third parties. Cost estimates provided by the supplier are binding and not to be paid unless expressly agreed otherwise. Every order confirmation made by the supplier that deviates from the order represents a new purchase quotation / offer and must be accepted by bösch in writing. A legally valid contract with the supplier including bösch's general terms and conditions of purchase results from the written order communicated to the supplier and the supplier's consistent acceptance.

## **3.) Prices and conditions of payment**

The price shown in an order is binding. In the absence of any other agreement, the price of transactions with third countries shall be DDP (delivered duty paid) and of intra-Community supplies shall be DAT (delivery at terminal) in accordance with Incoterms 2010. The invoice shall be sent electronically immediately after delivery as a pdf document to [eingangrechnungen@boesch.at](mailto:eingangrechnungen@boesch.at). It must contain order date, order number (the name of the customer/buyer if not present), bösch's part number, gross weight and customs tariff number. Absence of these conditions means that bösch is not responsible for the delays in invoice processing or payment settlement arising as a result of this. Payments are made by bank transfer under the conditions applicable for the respective suppliers. Acceptance of the delivered goods without complaint and/or payment by bösch does not mean bösch waives the right to make a later claim for warranty, for compensation or to make any other claim against the supplier. Payment shall be made after agreement, otherwise within 14 days of delivery or acceptance of the total delivery with the agreed cash discount rates. Payment periods begin with the date of receipt of the invoice, however not before acceptance of the service or receipt of the delivery.

#### **4.) Delivery date and delivery delay**

Agreed delivery periods, delivery dates and delivery locations are binding. Delivery periods run from date of receipt of the order. bösch shall be informed of any delays immediately with a statement/explanation of the reasons. Compliance with the delivery period or delivery date will be determined by the date of receipt at bösch (for goods) and date of completion of the work (for services). The supplier is obliged to compensate bösch for damages caused by delay. In order to be able to maintain the production process/flow, bösch is entitled to make back-up/covering purchases. Any additional or ancillary costs that may arise shall be borne in full by the supplier. In addition, bösch is entitled to demand a contractual penalty of 3 % of the gross order value for every week of delivery delay commenced. The contractual penalty shall be set off against claims for compensation due to a delayed delivery period. bösch is entitled to refuse acceptance of goods delivered before the delivery date stated in the order and to return such goods delivered prematurely or to store them with third parties for the account of and at the risk of the supplier.

Confirmation of receipt shall only be regarded as acknowledgement of the receipt of the goods but not as proper fulfilment of the order. An accompanying document stating the order date, order number (the name of the buyer if not present), bösch's part number, the gross weight and customs tariff number shall be attached to all consignments. Partial deliveries shall be described as such and the quantity remaining to be delivered shall be stated. The agreed delivery dates mean, in each case, the date of arrival at bösch and shall be considered as fixed deadlines. Incoming goods can be received between Mon and Thurs from 07:30 until 16:00 and on Fri from 07:30 until 11:30.

If, in the event of force majeure, strikes or lockouts, it is not possible, or significantly more difficult, for bösch to fulfil contractual obligations, bösch may revoke/cancel the contract wholly or partially or ask to postpone performance without this giving rise to any claims by the supplier against bösch. If, in such cases, performance of the order is unacceptable to the supplier, the supplier has the right to withdraw.

#### **5.) Dispatch and transfer of risk**

The supplier's place of performance, subject to any separate individual contract provisions, shall be the place of receipt or use stated by bösch. This place shall also apply for transfer of risk.

#### **6.) Quality and documentation**

When making deliveries, the supplier shall comply with the generally approved practices of engineering (technical standards, provisions, procedures, conditions, etc.) and the respective applicable safety regulations. If the supplier has received drawings, samples or other specifications or documents from bösch, he shall comply with them insofar as they concern the performance of and characteristics of the delivery object. Changes to the delivery object, to an already approved production process or its transfer to another location require the prior express written approval of bösch.

#### **7.) Chemicals and hazardous substances**

With respect to goods and materials which require, due to laws, decrees and other provisions or due to their composition and their effect on the environment, special treatment as regards transport, packaging, labelling, storage, handling, manufacture and disposal, it is mandatory that the supplier fulfils the legal provisions of the country of manufacture as well as those of the distribution country. The supplier shall, before confirmation of the order, provide bösch with the corresponding legally

required documents in German and English. The supply of all hazardous substances with a UN number may only take place following presentation of an EC material safety data sheet and once this has been approved by bösch. Insofar as bösch, at the time of order confirmation, has not yet been presented with the EC material safety data sheets, bösch is entitled to withdraw from the contract, subject to a grace period of 14 days. In such cases, the supplier shall be liable to bösch for all potential damages resulting from the justified withdrawal from the contract.

The supplier shall ensure that the requirements of the EU chemicals regulation REACH (Regulation (EC) No 1907/2006) are observed and, in particular, that preregistration and registration both take place in accordance with the deadlines. bösch shall not be responsible for preregistration. The supplier is aware that the products may not be used if the requirements of REACH are not fulfilled completely and properly.

The supplier shall release bösch completely from any consequences, in particular damages of bösch and claims by third parties against bösch, that are the result of the supplier culpably not, not completely or not in a timely manner complying with or fulfilling the provisions of point 6.

The supplier must also assign the obligations detailed in this section of the contract to any subsuppliers, in full.

## **8.) Packaging**

The supplier shall comply with the requirements of the currently valid packaging regulation. The following applies to suppliers from Austria: all sales and transport packaging delivered to bösch with the products shall be disposed of by the supplier through/via/at an authorised collection and recycling system. A legally binding declaration shall be made on the respective invoice in accordance with Packaging Ordinance 2014. Exceptions to this rule are reusable packaging and packaging in accordance with paragraph 7 of the Packaging Ordinance 2014, as well as packing materials purchased by bösch as a product.

The supplier shall take back used packaging free of charge. Should this not be possible, the supplier will bear the corresponding appropriate disposal costs incurred by bösch.

## **9.) Warranty and recourse**

The statutory provisions of the warranty shall apply in the event of a defective delivery, unless otherwise specified in the provisions below. During the goods receipt process, bösch shall check that the products delivered from the supplier correspond with the goods ordered and shall also check for any differences in quantity as well as damages that are visible on the outside, as far and as soon as this is feasible according to proper business routines. Other defects not found by bösch until the delivered goods are processed, or until they are used as intended, shall be announced to the supplier by bösch immediately as soon as they have been detected. Acknowledgement of receipt does not constitute recognition that the goods are defect-free. In this respect, the supplier renounces the right of objection regarding delayed notice of defects. bösch has the exclusive right to choose between a correction of the defects and new manufacture (new performance). If repairs are to be made, the repair shall be deemed to have failed (subject to a reasonable period of grace) after the first unsuccessful attempt to repair the item. In urgent cases bösch is entitled, without prejudice to any other claims, after informing the supplier, to remedy defects at the latter's expense and risk. If bösch and/or customers of bösch suffer damages as a result of defective delivery or service, the supplier is obliged to compensate for the damages. The supplier, who is not merely an intermediary, is also responsible for defects in the supplier's deliveries and services even if they are not the supplier's fault.

The supplier has unlimited liability for the procurement of deliveries/services and the necessary subcontracted deliveries and services – even in cases where it is not the supplier's fault. Warranty claims by bösch against the supplier lapse 36 months after the date of delivery of the goods to bösch, unless otherwise agreed. The statutory provisions apply in the event of material defects in the items supplied that are used for a building structure in accordance with their normal purpose or in the event of defects of title. In the event of the delivery of replacement parts the period of limitation starts afresh at the time they are delivered to bösch.

All further claims, in particular as regards damages or a guarantee granted by the supplier, remain unaffected. If there are delays in delivery or service, the agreed due dates for payments shall be delayed accordingly. bösch is entitled to demand interest on any down payments for the duration of the delay at a rate of 9.2 percent above the respective base rate of the European Central Bank.

## **10.) Product liability**

If the supplier has caused a product defect and/or is responsible for it, the supplier is obliged to replace the resulting damage at bösch's first request and to release bösch from all claims by third parties, provided the cause for the claim lies within the supplier's control and organisation and the supplier would itself be liable towards third parties. Contributory negligence on the part of bösch may be asserted. The relevant proportion of the contributory negligence is governed by statutory provisions. The supplier's obligations shall also include the costs incurred by bösch availing itself of a solicitor's assistance or which otherwise arise in connection with averting product liability claims. The supplier is obliged to take out and maintain sufficient product liability insurance to cover the risks of product liability including recall risk. If the supplier does not have, or has insufficient, product liability insurance, bösch is entitled, in exceptional cases, to take out such insurance at the supplier's expense.

## **11.) Third-party property rights**

The supplier shall ensure that bösch or the customers of bösch do not, by the purchase, ownership, offering, use, processing or resale of the products, infringe on the intellectual property rights of third parties, in particular on trademark rights, rights to the company's name, patent rights, utility patent law rights, registered designs or copyright of third parties (including corresponding protective rights applications in the supplier's country of origin as well as within the European Union). If the supplier culpably breaches this obligation, then the supplier shall release bösch and any customers of bösch, at bösch's first request, from any claims by third parties arising from actual or alleged protective rights infringements and shall bear all costs and expenses incurred by bösch in this connection, in particular prosecution and defence costs on the one hand and costs resulting from the violation/disregard of a potential duty of omission on the other hand.

## **12.) Retention of title**

Full payment of the purchase price for the delivered goods means that they are transferred to the sole and unrestricted ownership of bösch. Any extended or expanded retention of title by the supplier to delivered products is excluded. All parts, raw materials, tools, materials or other devices or objects made available by bösch or that are purchased by the supplier at the expense of bösch and that are associated with the manufacture of the products or are used for that purpose, shall remain or become the sole property of bösch and can also be labelled as such. bösch also retains all the rights to all drafts, samples, drawings, data, software programs, models or other information and documents that originated from bösch. The supplier expressly agrees that neither bösch property nor bösch documents shall be used for the manufacture or construction of products for third party customers

without prior written authorisation from bösch. Insofar as the goods or tools provided by bösch are combined inseparably with other objects that are not the property of bösch, bösch shall acquire co-ownership of the new product in proportion to the value of the items bösch already owned to that of the other objects combined with at the time of combining.

### **13.) Confidentiality**

The parties to the contract undertake to treat all confidential information that they receive directly or indirectly from the other party to the contract as confidential. The supplier may only refer to the business relationship with bösch in promotional material if bösch has given written agreement to this effect. Production resources such as drawings, models, samples, templates, matrices, software programs etc., made at bösch's expense or made available by bösch may likewise not be referred to for the supplier's own purposes.

### **14.) Order development**

Insofar as the supplier performs development work for bösch for production material, the costs of which are either paid by bösch separately and/or are reimbursed through the prices to be paid for the products, the supplier shall achieve a development result that is free of the trademark/protective/property rights of third parties. In addition, the legal ownership of all development results achieved by the supplier in the context of the collaboration devolves on bösch upon their creation.

### **15.) Spare part supply**

The supplier undertakes to ensure product-specific spare part supply for a period of at least 10 years (particularly after expiry of the products).

### **16.) Other provisions**

The supplier is not entitled, without prior written authorisation from bösch, to assign any claims or have them collected by third parties. Such consent may not be refused unreasonably by bösch.

Should any provision of these conditions and the further agreements concluded be or become ineffective, this shall not affect the validity of the other conditions or (otherwise) the validity of the contract based thereon. The parties to the contract are obliged to replace the ineffective provision by an effective provision that most closely matches the economic effect of the ineffective provision.

If the supplier suspends payments or if insolvency proceedings against the supplier's assets or judicial or extra-judicial composition/settlement proceedings are applied for, bösch is entitled to withdraw from the non-fulfilled part of the contract.

### **17.) Place of performance and jurisdiction**

In addition to these general terms and conditions of purchase, the relevant statutory provisions also apply. The law of the Republic of Austria applies exclusively. Application of the UN Sales Convention is excluded.

The place of performance for deliveries and services is – subject to section 5 – the place of destination. The place of jurisdiction is bösch's registered office recorded in the commercial register. bösch is also entitled to bring legal action at the supplier's registered office.