

Terms and Conditions of Purchase



Version: 15th December 2021

of Bauwerk Group Schweiz AG, Neudorfstrasse 49, 9430 St. Margrethen SG, Switzerland and our affiliated companies (hereinafter «Bauwerk/we/us»)

1. Scope

All our purchase business transactions are exclusively based on these Terms and Conditions of Purchase. They shall apply in their most recent version to all future contracts for the supply of products and/or provision of services (hereinafter "services") of the Supplier (hereinafter "Supplier/you/they"). The Terms and Conditions of Purchase (hereinafter "Terms and Conditions") shall become part of the contract at the latest upon acceptance and commencement of the business transaction.

These Terms and Conditions shall also apply to our purchase orders, framework contracts, supply contracts and quantity contracts, unless they are expressly excluded by us.

2. Entire Terms and Conditions

Any contractual conditions of any kind used by the Supplier shall not apply and are expressly excluded. Deviations from and additions to these Terms and Conditions by the Supplier shall only be effective with our explicit written confirmation; they shall only apply to the transaction for which they were agreed in the individual case. In all other respects, the execution of our business transaction, our purchase order or contract by the Supplier shall be deemed to be acceptance of these Terms and Conditions.

3. Contractual components and ranking

The binding legal relationship with the Supplier is based on these Terms and Conditions, the Purchase Order and, in certain cases, a separate agreement and/or a Data Processing Agreement. If there is an individual Agreement or Purchase Order and the Personal Data Processing agreement, they take precedence over these Terms and Conditions in application.

4. Offer and Acceptance

Offers of the Supplier must adhere to the provisions contained in our request for quotation with regard to quality and quantity as well as other provisions relating to the Services. If the supplier wishes to deviate from our request for quotation, he must expressly indicate such possible deviations in writing. An offer shall only be deemed accepted after our explicit written confirmation.

5. Purchase Order

As a matter of principle, our purchase orders are to be confirmed immediately after receipt, but at the latest within three (3) working days, stating all details of the purchase order. If we do not receive such confirmation within this period, we shall no longer be bound by the purchase order unless otherwise agreed in writing, e.g. a waiver of order confirmation.

Within the concluded contractual framework, the Supplier shall comply with all legal provisions and requirements.

6. Price

All prices of the Supplier shall be fixed prices for the duration of the contract (excluding statutory levies such as value added tax, sales tax, etc.). This also applies to unit and lump-sum prices. Transport prices are included in the price.

If prices have not been specified either in the offer or in the purchase order confirmation or by any other agreement, the Supplier must communicate its prices to us for confirmation before the purchase order is executed. Within the scope of ongoing business relations, in the absence of an explicit price agreement, the price last charged by the Supplier for these or comparable Services shall apply.

In the absence of a written agreement to the contrary, the price includes freight, transport insurance, packaging and customs duty (delivery "free domicile", Incoterms: DDP).

Furthermore, we do not agree to price adjustment or price increase clauses or to a list price valid on the day of delivery (daily price clauses).

7. Shipping and Packaging

We must be notified of the shipment at the latest two (2) days before the goods are dispatched. Our shipping address and our purchase order number and item number as well as any other details we may have specified must be stated in the dispatch notes, freight documents and parcel labels. If the delivery is not accompanied by a delivery note from the Supplier, we are entitled to return the goods at the Supplier's expense.

The delivery item must be properly packaged. The packaging must comply with all technical, legal and official provisions as well as our packaging regulations. In particular, the packaging must be economical and, where possible, ecological. In the case of value-added shipping containers (e.g. pallet, bottles with depot), the Supplier shall be liable for differences in the number of value-added shipping containers delivered.

The Supplier shall ensure at its own expense that the shipping risk is fully covered by insurance.

8. Delivery dates and delays

The delivery periods and delivery dates stated in our purchase order are binding. The delivery periods run from the date of our purchase order; the date of receipt of the Services by us or at the delivery address specified by us shall be deemed to be the delivery date.

If no delivery period has been agreed, performance shall be rendered immediately, unless the circumstances indicate otherwise. We are not obliged to accept partial performance. When agreed, we accept +/- 10% differences in volume or order quantity for certain groups of goods.

In case circumstances occur or become apparent to the Supplier which indicate that the stipulated delivery time cannot be met, he is obliged to inform us immediately in writing. This also applies to circumstances and events for which the supplier is not responsible, such as force majeure.

The supplier shall be in default as soon as he fails to meet an agreed delivery date without the need for a reminder. In all other respects, the consequences of default shall be governed by the applicable statutory rules. We expressly do not agree with limitations of liability and indemnifications of any kind of the Supplier in the event of a delay in delivery.

In the event of a delay in delivery, we are entitled to charge interest on arrears in the amount of 1% of the delivery value per full week, but not more than 10% of the delivery value. We explicitly reserve the right to claim for additional damages/compensation. In the event the Supplier is in arrears, he shall be fully liable to us for any penalties which we have to pay to third parties due to his delayed performance. The supplier shall be entitled to prove to us that no damage or significantly lower damage has been incurred as a result of the delay.

9. Payment modalities

Invoices from the Supplier must bear our company name, our VAT number and our purchase order number and must comply with the statutory provisions concerning public charges (value added tax, VAT, etc.) and be in the national currency or in the agreed currency of the ordering company.

The Supplier shall further ensure that its correct company name and the associated valid VAT number according to the VIES database are listed on the invoice.

Invoices that do not comply with the above conditions may be returned to the Supplier for completion.

Generally, payment is made of our ordering company,

- within 14 days with 3 % discount,
- within 60 days without any deduction,

in each case after receipt of proper and contractually compliant Services and the invoice. If invoices are received prior to performance, the payment periods shall be calculated according to the receipt of proper and contractually compliant performance. Invoices must comply with our specifications and, when applicable, be uploaded to invoice portals or delivered digitally.

Agreed advance and down payments are only due for payment after the risk of non-performance has been secured by the provision of an unconditional and indefinite bank guarantee, free of charge for us, in the amount of our preliminary performance.

We are entitled to offset and deduct any amount arising from services on our part from the Supplier's invoices. We are entitled to the agreed discount in the event we deduct any amounts. The Supplier is not entitled to any offset or deduction.

Our payments shall in each case be made subject to correction or reclaim in the event that the incorrectness of the calculation or objections should subsequently arise, as well as subject to the condition of proper receipt of the Services. Payments do not imply acknowledgement or acceptance of the delivery.

Any currency risk shall be borne by the Supplier. Any costs incurred in transmitting the payment to the Supplier, in particular bank charges, shall be borne by the Supplier.

10. Acceptance of Delivery and notice of defects

Deliveries involving larger quantities of the same products shall be inspected by us in form of a statistical sampling procedure. Agreed test deliveries are only accepted in accordance with defined technical specifications.

The Supplier waives all possible objections that such procedure does not comply with an obligation for inspection. In the event that the random samples reveal defective products, we shall be entitled, at our discretion, to reject the entire delivery without further investigation or to carry out a further investigation. The Supplier shall bear all costs of reasonable further investigations. In this case, a notice of defect from us to the supplier within three (3) weeks after receipt of the goods by us shall be deemed timely.

In the event that goods are not delivered to us but, as agreed, are delivered by the Supplier directly to a processor assigned by us or to our warehouse or are packaged, an obligation to inspect shall only apply when we inspect the goods after or with processing or when the product gets unpacked. In such case, we shall give notice of defects within three (3) weeks after processing or unpacking, but within eight (8) weeks at the latest.

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In any case, hidden defects remain unaffected by any obligation to inspect and can be reported at any time within the warranty period.

The Supplier must inform us immediately, spontaneously, and in writing if it makes any changes to the Services. In the event of any changes in the manufacturing conditions in its factories, such as the replacement of machines or ingredients or the introduction of new manufacturing processes relating to the Services, the Supplier must inspect the delivery item for possible deviations and changes and notify us of such deviations and changes in writing. If the Supplier fails to provide such notification, it shall be liable, without prejudice to any duty to inspect, in the event that the changed condition of the delivery item leads to a defect.

The Supplier is obliged to inspect the deliverables before delivery to ensure that it complies with the agreed quality and specification features and is free of defects. In the event the Supplier fails its duty to inspect the goods prior to delivery, the Supplier may not refer to any omitted inspection obligation on our part.

In the event of a defective delivery, we shall be entitled to return such delivery by carrier at the Supplier's expense. In case of immediate return of the delivery, the supplier waives any objection to possible approval of the Services.

11. Warranty

11.1 Quality of Service

At our request, the Supplier is obliged to provide free of charge a sample, a specimen and/or data sheets on any Services to be procured. The quality of the samples or specimens provided on request shall - in the absence of any other contractual agreement - be deemed to be the contractually agreed quality of the item. The same shall apply to the information in certificates of origin and safety data sheets as well as the obligations pursuant to Clause 18.

11.2 Material Warranty

The Supplier warrants that the Services comply with the agreed specifications, the quality agreements and warranted characteristics pursuant to section 11.1 above, are suitable for the intended use, correspond to the recognised state of the art and are free from defects in design, material and execution.

The warranty period for items that are used for a structure in accordance with their customary use and have caused its defectiveness shall be at least five (5) years and six (6) months, subject to longer statutory periods in the country of our ordering company.

The warranty period for the delivery of movable goods is three (3) years. In the event that a statutory provision obliges us to grant a longer warranty period to our customers the Supplier grants us an identical warranty period,

- if the goods are not intended for immediate processing, but are intended for storage for the purpose of stockpiling and this is known to the Supplier,
- for defects that typically cannot be detected by a normal inspection of the incoming goods and thus only arise as a result of complaints from customers,
- in the case of the delivery of technical devices and systems where the absence of defects can only be determined after a longer period of operation in accordance with the intended use.

Any other warranty period in connection with the delivery of movable goods is two (2) years. We expressly object to any further limitation of these warranty periods.

The warranty period for repaired or re-delivered items and parts is determined by the preceding paragraphs.

For our purchase agreements, we may immediately, at our discretion, withdraw from the contract or claim a price reduction or replacement delivery without first being referred to rectification. However, we are also entitled to demand rectification from the supplier. The costs of rectifying the defect, such as the replacement of the installed delivery and any removal, installation and transport costs incurred, shall be borne by the supplier.

The Supplier's warranty also extends to the parts or goods supplied by its sub-suppliers. The Supplier is not entitled to assign its claims against the sub-supplier to us and to make its own warranty obligation dependent on the fact that our action against the sub-supplier was unsuccessful.

We are entitled to remedy the defect ourselves or have it remedied at the Supplier's expense, without prejudice to our other claims, if the supplier is in arrears.

11.3 Legal Warranty

The Supplier warrants that the Services are free from third party rights or that it is authorised to distribute them. It also warrants that the Services are compliant with the further commitments of Clause 19.

In particular, the Supplier warrants that the goods are not subject to a third party's retention of title.

12. Liability

12.1 Unlimited Liability

The Supplier shall be liable to us and/or our employees without limitation in the event of intent and any negligence for all damage caused by him and his legal

representatives or vicarious agents. In particular, the liability in the event of injury to life, body or health is unlimited.

Liability on our part for all damages to the Supplier is excluded.

12.2 Limitation of Liability

Subject to Clause 12.1, the Supplier shall be liable for direct and indirect damages up to the amount of the delivery price or up to the amount of CHF 5 million, whichever is higher.

12.3 Exceptions to the limitation of liability

In the event that we become liable to pay any damages to a third party as a result of a service or product provided by the Supplier, irrespective of the legal grounds (e.g. as a result of product liability, breach of data security, data protection and confidentiality) and the cause of liability lay wholly or partly within the Suppliers sphere of control and organisation, it shall, irrespective of its intent or negligence, compensate us for all direct and indirect damage and also consequential damage caused by the performance of the Service or the provisioning of the Product.

In the event that we carry out a recall action of any Products, the Supplier shall be obliged within the scope of its liability to reimburse us for any expenses arising from or in connection with the performance of the action. We shall inform the supplier about the content and scope of the recall measures to be carried out - to the extent possible and reasonable - and give it the opportunity to comment. Other legal claims remain unaffected.

12.4 Product Liability in particular

The Supplier shall draw attention to the risks emanating from its product in the event of use for the intended purpose or improper use.

The Supplier undertakes to maintain a product liability insurance with a coverage of CHF 5 million per case of damage (personal injury and/or property damage); if we are entitled to further claims for damages, these shall remain unaffected by this insurance cover. Proof of the conclusion of the insurance policy shall be provided upon our request.

13. Intellectual Property Rights

All rights to documents (such as plans, sketches, technical descriptions, etc.), development tools, methodology, processes, technologies, algorithms, etc., and the objects depicted therein, as well as know-how, data and personal data, (hereinafter: "intangible assets"), which we provide to the supplier within the framework of a contractual relationship, shall remain with us or third parties. The Supplier is not entitled to use these intangible assets for purposes other than the manufacture and delivery of the goods or services without our written consent. In particular, it is not entitled to use them for third-party orders, to publish them or otherwise make them accessible to third parties without our express written consent.

The Supplier undertakes to return such documents to us immediately and spontaneously after termination of the contractual relationship. The right of the Supplier to retain copies for the fulfilment of statutory retention obligations remains reserved.

The Supplier warrants that no absolutely effective rights of third parties, in particular no patent and property rights, are infringed in connection with its delivery. If claims are asserted against us by a third party due to such an infringement of rights, the Supplier shall be obliged to indemnify us against such claims upon first written request. All expenses incurred by us from or in connection with the claim by the third party shall be reimbursed to us. We reserve the right to assert further rights.

14. Secrecy

Both parties mutually undertake to keep secret from third parties all information marked as confidential or obviously confidential which they receive from each other in the context of cooperation under a contract. They shall ensure compliance with this obligation by their employees and any suppliers or subcontractors. This obligation of secrecy shall continue beyond the end of this contract for as long as the secrecy owner has an interest in secrecy. Anyone who claims that a secrecy interest no longer exists shall be obliged to prove this.

15. Data Protection

The Supplier is obliged to comply with the respective applicable obligations under data protection law when providing its Services. This includes in particular compliance with the provisions of Regulation (EU) 2016/679 (General Data Protection Regulation) and the Swiss Federal Act on Data Protection (SR 251.1). The Supplier undertakes to impose compliance with these provisions on its employees.

The personal data transmitted during the contractual relationship may only be used for the purpose of fulfilling the contract.

At our unilateral request, the Supplier is obliged to cooperate in the conclusion of a data processing agreement or a joint controller agreement.

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In the event of a data protection breach, the Supplier must inform us immediately, at the latest within 24 hours, in detail about the breach in accordance with our standard notification template and provide an assessment of the impact on us, our employees and our customers.

The Supplier is informed and agrees that all data concerning it, including personal data, within the meaning of data protection law, will be stored while we electronically process such data, to the extent that this is necessary in the context of the business relationship.

The Supplier must obtain our approval for any subcontractors it uses for the performance of its Services and who have access to our personal data.

The Supplier shall take appropriate technical and organisational measures to protect our personal data and our intellectual property rights.

16. Non-Competition

The Supplier undertakes not to supply any products to our competitors that contain or display intellectual property rights of ours.

Excluded are goods or products of the Supplier that form part of his usual range and are manufactured without utilisation of knowledge from a contractual relationship with us.

17. Retention of Title

Where we finance means of production or anything else to the Supplier, we may, until the time of full payment by the Supplier, enter a reservation of title pursuant to Art. 715 of the Swiss Civil Code in the official register at the respective place of the located object or in accordance with the formal requirements of the respective jurisdiction of the Supplier's registered office. The Supplier agrees to the registration of a reservation of title in all points essential for the registration and cooperates in any necessary additional declarations.

18. Other commitments

We strive to live and maintain a social commitment beyond our legal obligations. We expect from our suppliers a commitment to sustainability, social responsibility and compliance with laws and standards. In particular, our suppliers are obliged to comply with the following provisions as amended from time to time.

18.1 Code of Conduct

The Code of Conduct forms the basis for the actions of our employees and our suppliers worldwide. By doing business with us, you agree to comply with our Code of Conduct and to impose it on your subcontractors. You can find our Code of Conduct at: <https://bauwerk-group.com/code-of-conduct/>.

18.2 Respect for Human Rights

We act in accordance with the United Nations Guiding Principles on Business and Human Rights (Resolution 17/4 of 16 June 2011) and in line with our values. This means that we seek to avoid negative impacts of our activities, prevent negative business impacts, remedy impacts and uphold human rights. You are therefore obliged to comply with our principles in this regard, available at: <https://bauwerk-group.com/human-rights-rules/>.

18.3 Use and Declaration of Wood (EUTR / HHV / FSC)

The Supplier shall ensure that, irrespective of its actual subordination, it complies with all the conditions of Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market (EUTR). In particular, it shall comply with the FLETG authorisation procedure in accordance with Regulation (EU) No 2173/2005.

The Supplier further undertakes to comply with the legal provisions in Switzerland in this area, in particular as the Ordinance on the Declaration of Timber and Timber Products (SR 944.021) and the Timber Trade Ordinance (HHV 814.021). In particular, it shall ensure that it does not place timber and timber products from illegal logging on the internal market and in Switzerland.

In principle, the supplier explicitly undertakes to make a self-declaration in accordance with FSC-POL-01-004 and submits the signed form to us without being requested to do so.

18.4 REACH / Chemicals Regulation

In the event that the Supplier supplies articles within the meaning of Art. 3 Regulation (EC) No. 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation and associated regulations), it shall be responsible for ensuring that it sufficiently fulfils his obligation to pass on certain information in accordance with Art. 33 REACH Regulation and complies with the provisions of the Regulation. Furthermore, the local obligations of Swiss chemicals legislation (including ChemV and ChemRRV), in particular self-regulation, as well as prohibitions and restrictions, must be complied with.

This obligation exists regardless of the Supplier's place of manufacture or establishment.

In general, the supplier has to provide us with a safety data sheet (SDS) upon delivery of chemical products without being requested to do so, and in the event

of changes to the chemical product, an adapted safety data sheet has to be provided to us immediately in the relevant language.

18.5 Use of Biocidal Products

In order to protect our customers and the environment from harmful biocidal products, the Supplier undertakes not to use any products that are prohibited under the Swiss Ordinance on Biocidal Products (VBP, SR 813.12), the European Regulation on Biocidal Products (BPR, Regulation (EU) No. 528/2012) and the corresponding legal provisions applicable to the Supplier.

18.6 Energy and responsibility for the environment

Our suppliers are obliged to produce their products in a sustainable and energy-efficient manner, if possible, according to ISO 14001 and ISO 50001, and in particular to prove to us, that they achieve the best possible sustainability and energy balance values under the given conditions.

We comply with local and international environmental standards. As a supplier, you are committed to continuously improving your environmental performance and behaving in a sustainable manner.

We would like to draw your attention to the fact that, in addition to the quality of the products and services, environmentally oriented action as well as energy efficiency, energy balance and CO₂ emissions or the ecological footprint of the supplier as well as its sustainability reporting can represent a selection criterion when awarding a contract.

19. Contractual Penalty

If the Supplier or its auxiliary persons violate the obligations pursuant to sections 11 or 13 - 18, it shall owe us a contractual penalty of CHF 50'000 per violation. Payment of the contractual penalty does not release the supplier from compliance with the corresponding obligations. We reserve the right to prove higher damages. The contractual penalty shall be set off against the damage.

20. Final Provisions

The Supplier is not entitled to transfer or assign its obligation under a purchase order or a contract to a third party without our written consent.

We may change and amend these Terms and Conditions of Purchase at any time. These Terms and Conditions of Purchase and, unless otherwise agreed, all contractual relations between us and the Supplier shall be governed by the applicable law of our ordering company to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and any international conflict of laws rules in private law.

For disputes arising from or in connection with a contractual relationship with us, both parties acknowledge the exclusive jurisdiction of the ordinary judge at the seat of our ordering company.