

# Brüel & Kjær Vibro GmbH

## Procurement Terms and Conditions (January 2005)

### I. Scope of Application

1. Our following Procurement Terms and Conditions ("Procurement Terms and Conditions") apply to all orders, unless amendments and supplements to these conditions are agreed upon expressly and are made in writing.
2. Our Procurement Terms and Conditions apply exclusively. By placing the order the Supplier agrees on these Procurement Terms and Conditions. They also govern future transactions even if they were not explicitly agreed upon but reached the Supplier when placing a purchase order. In cases where a purchase order is confirmed and such confirmation deviates from our Procurement Terms and Conditions, our Procurement Terms and Conditions shall apply even if we do not object to such a deviating confirmation. Deviations therefore only apply if they are expressly approved by us in writing.  
Buyer's terms and conditions are only binding upon us, as far as they do not conflict with our provisions below.
3. Purchase orders, supplementary agreements, changes and other agreements require written form to be effective. The same applies to a waiver of written form. Irrespective of the provision above, oral covenants of the Supplier or its designees that are relevant with regard to the content of the contract become part of the contract and require no written confirmation by the Supplier in order to be effective.

### II. Offer and Conclusion of Contract

1. Our purchase offer ("Order") shall be binding upon us for a two weeks' term. The Supplier can only accept the offer within these two weeks in writing.
2. Our orders are to be confirmed by the supplier immediately.
3. Orders are only considered to be placed, if they are made in writing by using our purchase order form.
4. Designs, plans and other documents, which belong to the order, remain our property. We remain entitled to all industrial property rights concerning such documents. If the Supplier does not accept our offer within the aforementioned period, such documents are to be sent back to us without delay.

### III. Time for Delivery and Time of Performance

1. The term of delivery indicated in the Order or the indicated delivery date are binding upon the Supplier, these time data describe the latest possible date of arrival at the place of performance, and are, provided that there is no fixed calendar date as final date of arrival, calculated starting from the date of our Order.
2. If the Supplier is in delay of delivery, we are entitled to statutory claims. If we raise claims for damages, the Supplier may prove that he is not responsible for the breach of duties. Further, in case of default of delivery the statutory regulations apply exclusively, in particular the German Civil code (BGB) and/or the German Commercial code (HGB).
3. As far as force majeure is stated as reason for the default of delivery, we only accept: Strike, lockout, values of rejects, also at Supplier's subcontractors.

### IV. Confidentiality, Retention of Title and Provision of Materials

1. All parts and documents provided by us remain our property and have to be marked accordingly. Only upon our prior written consent the supplier may make use of and/or pass such parts and documents to third parties and/or make such accessible to third parties elsewhere than agreed upon in this contract. After execution of the respective contract the Supplier has to return them to us immediately at his own expense.
2. Documents, designs, parts and other help provided by us shall be returned after usage, at the latest after delivery or performance of the respective Order and shall not be made aware and/or made available to third parties without our written consent.

### V. Prices and Conditions of Payment

1. The stipulated prices are fixed prices, they apply to the entire scope of supply and services during the duration of the Order (contract) and include, unless not specified differently in the Order, the carriage paid until place of usage (Verwendungsstelle) as well as packing costs. Each change in price requires a new written agreement.
2. The price includes the valid value added tax. The Supplier shall pay all taxes, tariffs, fees and dues in connection with the delivery, unless no written agreement deviating herefrom was concluded with the Supplier.
3. All Supplier's invoices have to include at least our indicated purchase order number (in case of quantity contracts our call-off numbers), quantity and price per unit for each position as well as the delivery note number.
4. Unless otherwise agreed in writing, payment shall be made within 10 days upon delivery of goods and receipt of invoice with a deduction of a 2 % discount, or within 60 days upon delivery of goods and receipt of invoice without deduction.  
The method of payment is up to us.
5. We are entitled to all statutory rights concerning lien and set-off. We are entitled to assign all claims resulting from the contract to third parties without Supplier's consent. The Supplier is not entitled to assign claims resulting from the contractual relationship to third parties without our prior written consent.

### VI. Shipment and Packaging

1. Shipment shall basically be conducted by means of the cheapest mode of shipment. In case of delay the Supplier shall use the fastest possible mode of shipment and pay the extra costs. If the cost for packaging is not included in the price, such cost must be shown separately on the invoice because, as a basic principle, we do not return cardboards and wood packing. All deliveries shall be accompanied by a delivery note or a packing slip, even if the Products are delivered to our goods department. The supply must be conducted in whole, unless we expressly stipulated or requested partial deliveries.
2. Transport insurance for cargo damages will be provided and covered by us. Hence we are a self-insuring client („RVS-SVS-Verbotskunde“) in terms of German Forwarders' Standard Terms and Conditions („Allgemeine Deutsche Spediteurbedingungen (ADSp)“).

### VII. Duty to reproof and Inspection Instructions

1. We will examine the Products in respect of quality and quantity deviations within an appropriate period of time after delivery by the Supplier. The reproof of obvious defects is on time, if it is posted by us within ten working days starting from the delivery of the Products and received by the Supplier subsequently; the reproof of hidden defects is on time, if it is sent by us within ten working days starting from the detection of the defects and received by the Supplier subsequently.
2. The examination of the delivered Products shall be conducted - if there are no special conditions requiring a full examination - according to our random inspection standards.

### VIII. Supplier's Warranty and Liability

1. The warranty period for any service or delivered good, also for the nonexistence of the agreed quality, shall be 24 months in case of defects as to quality, defects of title and defects of any other kind of the service calculated starting from the final acceptance date, or if an acceptance does not take place, calculated starting from the date of receipt of the Products.
2. We are entitled to the statutory purchaser's claims based on defects against the Supplier and the Supplier's liability arising from the statutory law.
3. All costs incurred in connection with a defective delivery are to be covered by the Supplier.
4. All performance data prescribed in the Order or all performance information furnished in Offers and on data sheets must be met and are guaranteed by the Supplier.
5. We are entitled to withdraw from the contract and are entitled to damages in lieu of performance even in the case of only insignificant deviations from the agreed quality or in the case of an only insignificant impairment of the intended use.
6. The supplier shall ensure before executing the Order that the Products to be delivered do not offend against national or if necessary international regulations, in particular import and export regulations. The Supplier shall cover the consequences caused due to ignorance of such regulations.
7. In case of imminent danger, grave urgency or Supplier's default with remedy of defects we are authorized to rectify defects ourselves at the expense of the Supplier or to instruct third parties at the expense of the Supplier.
8. If a third party claims damages against us due to a product damage, for which the Supplier is responsible, the supplier, on our first request, has to indemnify us from all third party's claims including the necessary costs for the defense against such claims, provided that the damage was caused within the Supplier's domain or organizational area.
9. If we have to conduct a recall due to a damage event in terms of Number 8, the Supplier shall refund all expenditures which we incur in connection with the conducted recall. We shall inform the Supplier, as far as we are able to and it is temporary reasonable, on the matter and extent of the recall and give him the opportunity for an opinion. Our further statutory claims remain unaffected.
10. If a third party claims damages against us because Supplier's delivery infringes an industrial property right of a third party, the supplier has to indemnify us on our first request from all third party's claims including the necessary costs incurred by us from such claim and for defending against such claim. We shall not be entitled to acknowledge third party's claims and/or to settle agreements with third parties concerning these claims without written consent of the Supplier. The period of limitation of such claim for indemnification is three years from our knowledge of the raising of a claim by a third party, but such claim shall be prescribed after a 10 years' limitation period at the latest from the delivery of the Products.
11. A limitation of Supplier's liability for direct or indirect damages, e.g. liability in tort, positive violation of contractual duty, is excluded.

### IX. Place of Performance, Passing of Risk and Place of Jurisdiction

1. Place of performance and exclusive place of jurisdiction for deliveries and payments (including actions with regard to claims concerning payment of a cheque) as well as for all disputes resulting from contracts closed between the Supplier and us, is our place of business and for deliveries with different address the indicated delivery address shall be considered to be the place of performance, provided that the Supplier is merchant in terms of the Commercial Code (HGB).
2. Upon arrival of the Products to be delivered at the stipulated place of delivery, the risk of accidental loss, destruction or deterioration passes to the Buyer.

### X. Confidentiality

1. The contracting parties commit themselves to deem as business secrets all commercial and technical details which come to their knowledge during the course of their business relationship unless such details are public.
2. Drawings, models, patterns, samples and similar objects shall not be made available or otherwise be made accessible to unauthorized third parties. Reproduction of such objects is permitted only according to business requirements or in compliance with the laws on copyright.
3. Subsuppliers shall be made to commit themselves accordingly.
4. Each contracting party may use the established business relationship for advertising purposes only after having obtained previous written consent from the other party.

### XI. Governing Law

The laws of the Federal Republic of Germany apply exclusively to the legal relationship of the contracting parties, excluding the rules of the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

### XII. General

1. In the event any provision of these Terms and Conditions or of the agreement is or becomes invalid in whole or in part, the validity of all remaining provisions shall remain unaffected thereby. A void or non-specific provision shall be replaced by a provision or be interpreted in a way that comes as close as possible to the intended economic purpose.
2. If a contracting party stops its payments or if insolvency or composition proceedings are requested, or if initiation of such proceedings is rejected for lack of assets, the other party is entitled to withdraw from the part of the contract that is not fulfilled.