

**General Purchase Terms of the**  
**Bleistahl GmbH & Co. Holding KG, the Bleistahl Produktions-GmbH & Co. KG and the**  
**Bleistahl Gelsenkirchen GmbH & Co. KG**

**10.06.2021**

**1. Scope; conflicting/overriding agreements**

- 1.1 These General Purchase Terms (“**Purchase Terms**”) apply to all contracts concluded between Bleistahl GmbH & Co. Holding KG, Bleistahl Produktions-GmbH & Co. KG and Bleistahl Gelsenkirchen GmbH & Co. KG (each a “**Customer**”) with its suppliers and contractors (each a “**Supplier**”) relating to their deliveries and other services.
- 1.2 These Purchase Terms shall apply, provided that the Supplier is an entrepreneur within the sense of Section 14 of the German Civil Code (BGB) upon conclusion of the contract. They shall also apply to transactions with legal persons under public law or special funds under public law. They shall not apply to transactions with consumers.
- 1.3 Any deviating conditions of the Supplier, which are not explicitly acknowledged by the Customer, are not applicable. This shall also apply in cases where the Customer makes its delivery without reservation, although it is aware of the Supplier’s objecting terms or terms deviating from these Purchase Terms.
- 1.4 These Purchase Terms also apply to all future transactions between the Supplier and the Customer in ongoing business relationships.
- 1.5 Individual agreements with the Supplier and deviating information in the Customer’s offers shall in any case take precedence over these Purchase Terms. In the event that a deviating individual agreement has been made, it shall only apply to the respective individual case, against the background of which it has been made, and not to future contractual relationships established with the same Supplier.

**2. Requests; preparation of offers; written form; orders; conclusion of contract, call-off orders; modification of goods/services**

- 2.1 The Customer’s requests submitted to Suppliers shall be non-binding and constitute no binding offers.
- 2.2 The preparation of offers by Suppliers shall not be remunerated by the Customer; likewise, cost estimates and other preliminary work shall be free of charge for the Customer.

- 2.3 All orders and acceptance confirmations, changes and other side agreements and arrangements made prior to or at conclusion of the contract must be set forth in writing (letter, fax, e-mail, together “**written form**” or “**in writing**”) to become legally effective.
- 2.4 The Supplier must confirm all orders in writing without delay, stating the order number. The Customer may cancel any order that the Supplier has not accepted within one week after the date of the order or modify such order free of charge. For call-off orders, the Customer’s call-off notices become binding unless the Supplier objects within one week after receipt; The Customer shall notify the Supplier hereof on the call-off notice.
- 2.5 The Supplier shall alert the Customer to any contradictory, incorrect or incomplete information about the goods or services in the order and await written clarification from the Customer before dispatching the order confirmation or starting to perform the contractually agreed services.
- 2.6 The Supplier shall alert the Customer to any contradictory, incorrect or incomplete information about the goods or services in the order and await written clarification from the Customer before dispatching the order confirmation or starting to perform the contractually agreed services.
- 2.7 Without the Customer’s prior consent, the Supplier will not make any modifications, for example to the design, the composition, the method of dispatch or the packaging of the goods.

### **3. Prices; invoices; payment terms; advance payment**

- 3.1 The prices indicated on the Customer’s orders are fixed and net prices. Unless agreed otherwise, the prices are “DDP place of fulfilment” (INCOTERMS 2020) as set out in clause 5.2 and inclusive of all expenditures in connection with the deliveries and services owed by the Supplier, in particular but not limited to the cost of any inspection, acceptance, documentation, preparation of technical documents, packaging, shipping, customs and border clearance charges, and insurance. Where “DDP place of fulfilment” has not been agreed and the Supplier is obliged to dispatch the goods, the Supplier shall choose the most economic shipping method. Where the agreed price is not “inclusive of packaging”, the packaging shall be billed at cost.
- 3.2 Invoices must be submitted in duplicate, no later than 10 working days after flawless delivery, separate from the goods if goods are delivered, and be verifiable. Invoices must at least indicate the product number and product name, the full order reference or the Customer’s order number, the date of the order, the shipping note number and the date of the

delivery or service. The statutory value-added tax shall be shown separately in the invoice and shall correspond to the statutory value-added tax rate applicable at the date of the invoice.

- 3.3 Payment shall be made within 14 days after delivery or (for work results) acceptance and receipt of a contractual invoice with a 3 % discount, and within 30 days net. Discountable payments will be deemed in time if the Customer undertakes the necessary transaction within the payment period. Any invoice failing to meet the criteria of clause 3.2 above may be rejected by the Customer, in which case the beginning of the above periods for payment shall be determined by the date of receipt of the new, duly prepared invoice. In the event of early delivery or services the agreed date of delivery or service shall take the place of delivery or service for the calculation. Payments, at the Customer's discretion, shall be made either by bank transfer or by cheque.
- 3.4 The place of fulfilment for all payment obligations shall be at the Customer's registered seat in Wetter or Gelsenkirchen (please check the purchase order) for orders placed by Bleistahl GmbH & Co. Holding KG and Bleistahl Produktions-GmbH & Co. KG and the Customer's registered seat in Gelsenkirchen for orders placed by Bleistahl Gelsenkirchen GmbH & Co. KG.
- 3.5 The Customer's rights of setoff (*Aufrechnung*) and retention (*Zurückbehaltungsrecht*) are governed by the applicable laws.
- 3.6 An obligation to advance payment agreed upon in individual cases shall no longer apply if circumstances arise with the Supplier that make a contractual delivery and service appear doubtful. This applies, in particular, if (i) the Customer's credit insurance refuses to cover the order or parts of the order from the Supplier or (ii) if the Supplier insufficiently fulfils its contractual obligations towards the Customer or third parties or pays late. Payment in advance shall then be replaced by concurrent payment against delivery and performance.
- 4. Delivery dates and deadlines; pre-schedule deliveries and delivery by instalments; excess and short delivery; late delivery; contractual penalty**
- 4.1 All dates and times for deliveries and services as indicated by the Customer and/or as agreed are binding. If a delivery period is agreed upon, the Supplier shall communicate the exact delivery date no later than 48 hours before delivery to the Customer.

- 4.2 Where “DDP place of fulfilment” has not been agreed the Supplier shall provide the goods in a timely manner considering the time commonly required for loading and dispatch and, if applicable, arrange for their dispatch with the carrier designated by the Customer.
- 4.3 Unless stated otherwise on the Customer’s order, pre-schedule deliveries and services, partial delivery/services as well as excess and short delivery are permitted only with the Customer’s express consent and must be identified accordingly in the shipping papers. The Customer shall be entitled to reject pre-schedule, partial, excess or short deliveries to the extent the Customer has not given such express consent.
- 4.4 If the goods are delivered on an earlier date than agreed upon, the Customer reserves the right to return the goods at the Supplier’s expense. If the goods are not returned, the goods shall be stored at the Customer until the agreed delivery date at the Supplier’s expense and risk.
- 4.5 The Supplier shall advise the Customer in writing without delay of any foreseeable delay in deliveries and services, indicating the reasons and the anticipated duration of the delay.
- 4.6 If the Supplier is late with any delivery or service, the Customer will have the right to charge a contractual penalty in the amount of 0.3 % (workday) of the net value of the goods or services with which the Supplier is late but no more than 5 % of the net value of such goods or services, for each working day or part thereof (Monday to Friday except public holidays at the Supplier’s and at the Customer’s registered office). Notwithstanding Section 341(3) BGB, the Customer may claim the contractual penalty until the Customer’s final duty, for example the final payment, has been fulfilled. Nothing in this shall prejudice any further rights and remedies the Customer may have for reason of the delay. Contractual penalty payments will be credited against any claims for damages as may exist.
- 5. Labelling/packaging; place of delivery/fulfilment for deliveries/services; shipping note**
- 5.1 All goods must be duly and properly packaged and labelled in accordance with the Customer’s instructions. Where the Supplier is obligated to take back transport packaging in accordance with the German Packaging Ordinance (*Verpackungsverordnung*) or foreign legislation the Supplier must retrieve the packaging from the place of fulfilment at the Supplier’s expense.
- 5.2 The place of fulfilment for all deliveries and services shall be the place of delivery indicated on the order, unless agreed otherwise and subject to clause 3.4. If no place of delivery is

indicated on the order, the place of fulfilment shall be at the Customer's registered seat in Wetter for orders placed by Bleistahl GmbH & Co. Holding KG and Bleistahl Produktions-GmbH & Co. KG and the Customer's registered seat in Gelsenkirchen for orders placed by Bleistahl Gelsenkirchen GmbH & Co. KG.

- 5.3 Every delivery of goods must include a shipping note indicating the Customer's order number and describing the content of the delivery by the Customer's product number(s) (if stated on the order), the nature and the quantity of the goods.

## **6. Supplier's right of retention; setoff and assignment**

- 6.1 The Supplier has a right of retention with respect to deliveries of goods or work results only on the basis of claims from the same contractual relationship that are undisputed or have been established by final enforceable judgment. Any setoff by the Supplier shall only be permitted on the basis of the Supplier counterclaims that are undisputed or have been established by final enforceable judgment.

- 6.2 The Supplier shall have no right to assign its claims against the Customer or have them collected by a third party, unless the Supplier has granted its supplier an extended reservation of title in the ordinary course of business. Nothing in this shall prejudice Section 354a of the German Commercial Code (HGB).

## **7. Passage of title; processing of delivered goods prior to the passage of title**

Where a reservation of title has been agreed for delivered goods, the title passes to the Customer at the latest upon payment of such goods. The Customer has the right to process, sell or otherwise dispose of delivered goods in the ordinary course of business, including before the passing of the title.

## **8. Quality requirements; compliance, in particular RoHS / REACH / CE marking**

- 8.1 The Supplier in its deliveries and other services is responsible for observing the current state of the art and the agreed technical data and specifications, without prejudice to further duties as may exist. The Supplier shall maintain a quality assurance system that conforms to at least the recommendations of DIN ISO 9000ff. Regarding first article inspection, reference is made to the VDA Volume 2 "Quality Assurance for Supplies Production process and product approval PPA", and particularly to the chapter "Selection of Suppliers" contained therein. Only after the Customer has accepted the first article, series delivery may be commenced. Any modifications to the goods to be delivered require

the Customer's prior written approval. Notwithstanding this, the Supplier shall constantly verify the quality of the goods to be delivered. The contracting parties shall inform each other about the possibilities for quality improvement.

- 8.2 In the event that the Supplier and the Customer have made no agreement on the type and scope of the inspection as well as the test devices and methods used for quality assurance, the Customer, upon request of the Supplier, is willing to discuss the inspection with the Supplier and determine the necessary state of the testing technology within the limits of its knowledge, experience and possibilities. Furthermore, the Customer shall inform the Supplier upon request about the relevant safety regulations.
- 8.3 Furthermore, in relation to parts marked in the technical documentation or by way of special agreement, the Supplier shall separately record the time and place and by whom the goods to be delivered have been inspected in respect to characteristics requiring documentation and shall further record the results obtained from the required quality control inspections. The inspection documentation shall be kept for 10 years and presented to the Customer if required. The Supplier shall make its subcontractors subject to the same duties to the extent permissible by law. As guidance, reference is made to the VDA Volume 1 "Documented Information and Retention".
- 8.4 To the extent official authorities are responsible for the supervision or control of safety or the operation of the final product, for which the Customer utilises parts or services of the Supplier, demand access to the production procedure or the inspection documentation of the Customer for the purpose of verifying certain requirements, the Supplier undertakes, upon request of the Customer, to grant the same rights to the official authorities at its premises and provide any reasonable assistance.
- 8.5 Upon request, the Supplier shall provide the Customer with duly signed certificates of origin (e.g. in accordance with EU, EFTA or NAFTA regulations) including all necessary details. The Supplier shall inform the Customer if any goods to be delivered are subject to statutory export limitations or export limitations ordered by official authorities. In particular, the Supplier shall forward to the Customer the required declarations certifying the origin of the goods for customs purposes under the Regulation (EC) 1207/2001 at the conclusion of each contract, unless the Customer has been provided with a valid long-term supplier declaration. The Supplier shall be liable under the law for any and all disadvantages sustained by the Customer as a result of a Supplier declaration not being submitted in proper form or late. If necessary, the Supplier will prove the information about the origin of the goods by way of an information certificate approved by the Supplier's customs office.

8.6 The Supplier, at its expense, is responsible to ensure compliance of its deliveries and other services with all applicable requirements of European and national law governing the lawful distribution within the European Economic Area and Switzerland, in particular but not limited to the Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) and the Directive 1907/2006 of 30 December 2006 on the registration, evaluation, authorisation and restriction of chemicals (REACH) each as applicable from time to time and the national transposition measures. Where required by law, goods must be provided with a CE marking (for example toys, electrical and electronic equipment) and furthermore must be labelled and packaged in compliance with all other applicable legal requirements. For any delivery of electrical and electronic equipment, the Supplier shall proactively and at the Supplier's expense provide the Customer with a current EU declaration of conformity prior to the delivery and shall continually update the declaration in the event of ongoing business relationships. The Supplier shall be liable to the Customer under the law for any and all losses and costs caused by any breach of these obligations, and shall indemnify the Customer against third party claims in this respect.

8.7 The Supplier shall comply with all other national, European and international laws applicable to the deliveries and other services, in particular but not limited to environmental protection, health and safety protection (including any minimum wage), product safety, anti-corruption, antiterrorism, and data protection legislation, as applicable from time to time, at the Supplier's expense. The Supplier will not take part in any child labour scheme, be it actively or passively, directly or indirectly.

## **9. Defects; warranty; statute of limitations; right of entry**

9.1 The statutory provisions (Sections 377, 381 HGB) apply to the commercial duty of inspection and notification of defects with the following condition: the Customer's duty of inspection is limited to defects which become apparent during an incoming goods inspection under external examination including the delivery documents (e.g. transport damage, wrong and short delivery) or which are recognizable at the Customer's quality control in random sampling. If acceptance has been agreed, there is no obligation to carry out an inspection. Besides, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case.

9.2 The Customer's warranty rights (*Gewährleistungsrechte*) are governed by the applicable laws, as amended by the terms of this clause 9 and clause 10.2. Any limitations or exclusions of liability by the Suppliers are not applicable.

- 9.3 For deliveries of goods, the Customer must report any obvious defects to the Supplier within 14 days after delivery and any hidden defects within 14 days after their discovery.
- 9.4 The Supplier has sole responsibility for the deliverables and work results, whether or not the Customer has approved any drawings, calculations and other documents or attended technical or official inspections, tests and acceptance tests. This also includes proposals, recommendations and other contributions by the Customer.
- 9.5 The Supplier will bear all expenditures incurred in connection with determining and removing defects, including expenditures incurred by the Customer. Where any goods delivered have been incorporated in another product in accordance with their nature and intended purpose the Supplier, as part of the duties of remedial action, shall in the Customer's discretion either undertake the necessary removal of the defective item and fitting of the repaired or delivered defect-free item at the Supplier's expense, or reimburse the Customer for the necessary expenditures.
- 9.6 Any payment towards the agreed price or acceptance of the goods by an agent of the Customer from the Supplier prior to the determination of a defect shall not constitute an acknowledgment that the goods are free of defects or release the Supplier of its liability for defects.
- 9.7 The Customer may at its discretion choose between the removal of a defect or delivery of a replacement or, where work results are concerned, the completion of a new work result.
- 9.8 Where, due to particular urgency of the matter, it is not appropriate to set a deadline for the Supplier to take remedial action the Customer, without prejudice to the Customer's legal remedies, has the right to undertake or arrange for substitute performance and claim reimbursement of the necessary expenditures from the Supplier. The Customer will give the Supplier advance notice of any such substitute performance, where possible.
- 9.9 The Customer's warranty claims shall become time-barred 36 months after the beginning of the statutory limitation; nothing in this shall prejudice any suspension or interruption of the limitation period as may be provided by law.
- 9.10 The Customer has the right to request access to the manufacturing sites of the Supplier and, if applicable, of the Supplier's sub-suppliers in order to inspect the goods and work results on site for flawlessness, subject to reasonable prior notice and during normal operating hours; this includes inspections for the use of suitable materials and appropriate pro-

professionals. The Supplier shall provide any information necessary for this purpose and submit the relevant documents for viewing. Where necessary to protect trade or business secrets of the Supplier or a sub-supplier, and requested by the Supplier for that reason, any such inspection shall be carried out by a third party sworn to secrecy, who must not forward any information about trade and business secrets to the Customer. Inspections shall be without legal effect on any formal acceptance of the deliveries and services.

## **10. IP rights**

- 10.1 The Supplier grants the Customer non-exclusive, perpetual, worldwide, irrevocable and assignable rights of use in all deliveries or work results eligible for intellectual property protection in order to integrate them in other products, distribute them and make them available to the public on the internet. In particular but without limitation, this includes the right to modify, edit or otherwise redesign the deliverables or work results for purposes of integration and to distribute the deliverables or work results in the original or in a modified, edited or redesigned form.
- 10.2 The Supplier shall indemnify the Customer against any and all claims of third parties resulting from any infringement of patents, copyrights, design rights, trademark rights, name rights and other intellectual property rights and applications for intellectual property rights ("**IP Rights**") through the contractually agreed use of the deliverables or work results, unless the Supplier is not responsible for the infringement of rights. This applies equally to all necessary expenditures incurred by the Customer in connection with any such third party claims, in particular the costs of legal defence. Where the Supplier may be held liable under this clause 10.2, the Supplier further will be liable for all consequential losses incurred by the Customer, particularly as a result of shortage of supplies and disruptions of production. The claims under this clause 10.2 shall become time-barred 36 months after the beginning of the statutory limitation; nothing in this shall prejudice any suspension or interruption of the limitation period as may be provided by law.
- 10.3 IP Rights that arise from developments based on special orders by the Customer or joint developments with the Supplier are vested solely in the Customer if they are based on the Customer's secret knowhow and/or if the Customer bears the development costs. For this purpose, the Supplier herewith assigns to the Customer any and all IP Rights in such developments at the latest from the moment of their creation. If it is impossible to assign the resultant IP Rights to the Customer, the Supplier will grant the Customer at the latest at the moment of their creation exclusive rights of use for full exploitation, in particular with no limit as to time, territory and subject matter.

10.4 The Supplier may use any goods manufactured, services rendered or other work results made with knowledge or resources from the Customer (such as designs, drawings, specifications), which incorporate IP Rights or secret technical knowhow or manufacturing methods of the Customer, only to fulfil the contract with the Customer.

## **11. Supplier's liability for product damage; recalls; insurance**

11.1 In the event of any product damage the Supplier will indemnify the Customer against any third party claims, provided the cause of the damage falls within the Supplier's sphere of control and organisation and the Supplier is liable in relation to third parties.

11.2 In the event of any necessary recall and/or recall ordered by the authorities or other actions required to avert danger to individuals or property of third parties, the Supplier is liable for all expenditures, costs and losses incurred by the Customer as a result of such recall or other action and will indemnify the Customer against any such third party claims where the cause of the recall or other action is lack of conformity of the deliverables and/or packaging or services with the contract, particularly lack of conformity with the agreed specifications or contractual representations or a product defect, unless the Supplier is not responsible within the meaning of clause 11.1 above. Nothing in this shall prejudice any further rights or remedies as may exist.

11.3 Without prejudice to any further duties, the Supplier shall notify the Customer without delay if the Supplier becomes aware of any specific circumstances with a view to the goods delivered or services rendered that necessitate a recall or other action according to clause 11.2 above by the Customer or by the Supplier and/or establish a relevant risk of product liability. The contracting parties shall seek to coordinate the further steps while the Customer will have the right to take the final decision on a voluntary recall campaign. Nothing in this shall prejudice any statutory reporting duties of the contracting parties.

11.4 The Supplier shall at the Supplier's expense and at least for the duration of the business relationship maintain liability insurance, including product liability and recall insurance, providing for adequate coverage for the Supplier's deliveries and services; the product liability insurance shall provide a minimum cover of EUR 10 million per claim for personal injuries and property damage (including exclusive pecuniary losses) and a maximum annual indemnity limit of no less than EUR 20 million, while the recall insurance shall provide a minimum of EUR 5 million per claim and per insurance year. Copies of the insurance policies shall be submitted to the Customer upon request.

## **12. Tools; provision of materials**

- 12.1 If, at the Customer's request, the Supplier makes any tools including technical documents, drawings, standard specification sheets, etc. ("**Tools**") for purposes of fulfilling the contract, the parties agree that such Tools shall become the property of the Customer. In lieu of their actual handover, the Supplier has the right to keep the Tools on loan for purposes of fulfilling the contract. The Supplier may not use the Tools for fulfilling other orders from third parties. Upon fulfilment of the contract and on the Customer's request the Supplier must release the Tools to the Customer. The compensation for the making of the Tools is included in the agreed total price, whether or not it is indicated separately.
- 12.2 All items, models, documents, drawings, samples and tools made available to the Supplier by the Customer for purposes of fulfilling the contract are the Customer's property. This includes items acquired by the Supplier at the Customer's expense for purposes of fulfilling the contract and material provided by the Customer. The items and documents made available to the Supplier may only be used and – as required for operational reasons and permitted by copyright legislation and only as strictly necessary to fulfil the contract – copied for fulfilling the contract with the Customer. After fulfilment of the contract and at the Customer's request, they must be returned to the Customer without delay, including all duplicates made thereof.
- 12.3 The Supplier bears the risk of loss of and damage to the property of the Customer, however, not for normal wear and tear. The Supplier will store the property of the Customer at the Supplier's expense and with the diligence of a prudent businessman, separate from other property of the Supplier, handle it with care, maintain it in good condition and, as reasonably feasible, mark it as the property of the Customer. The property of the Customer may not be removed from the Supplier's business premises and/or the agreed location, sold, used as collateral, pledged, etc.
- 12.4 The property of the Customer may not be joined, mixed or processed with the Supplier's or a third party's property unless this is necessary for fulfilling the contract with the Customer. In the event of processing or transformation, the Customer shall be considered the producer. If the property of the Customer is joined or inseparably mixed with other items, the Customer shall be considered co-owner at the proportion of the value (purchase value plus value-added tax) that the items had at the time of joining or mixing. If such joining or mixing is such that the Supplier's property may be considered the main component, it shall be agreed that the Supplier transfers proportionate co-ownership to the Customer. The Supplier shall store the sole or joint property for the Customer.

12.5 The Supplier shall insure the property of the Customer at the Supplier's expense at reinstatement value. The Supplier hereby assigns to the Customer, and the Customer accepts the assignment of, any payment claims against the Supplier's insurance relating to the property of the Customer.

### **13. Confidentiality; advertising**

13.1 The Supplier shall treat as a business secret and keep confidential any and all commercial and technical information that is not publicly known (e.g. from illustrations, plans, drawings, calculations, execution instructions, product descriptions) and which is disclosed to the Supplier in connection with the business relationship with the Customer, as well as the fact of the business relationship as such. This confidentiality undertaking shall survive and remain in effect after the termination of the contract. The confidentiality undertaking does not extend to information which (i) is or becomes public domain other than by a breach of rights, (ii) is known to the Supplier at conclusion of the contract, or (iii) is disclosed to the Supplier by a third party without breaching any nondisclosure obligation.

13.2 The Supplier may not advertise the business relationship with the Customer or use it for reference purposes, except with the Customer's express consent

### **14. Applicable law; place of jurisdiction**

14.1 The contractual relationship between the Customer and the Supplier, including these Purchase Terms, shall be subject to the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14.2 The place of jurisdiction for all disputes arising from and/or in connection with the contractual relationship, including these Purchase Terms shall be the registered seat of the Customer, if the Supplier is a business person (Kaufmann) as defined by the German Commercial Code (HGB), a legal person under public law or a special fund under public law. In all cases, however, the Customer shall be entitled to bring an action at the place of performance of the delivery obligation or at the Supplier's general place of jurisdiction. Any overriding statutory provisions, in particular, regarding exclusive places of jurisdiction, shall not be affected.

**15. Final provisions**

- 15.1 Changes or supplements to the contract, including this written form provision, must be made in writing to become effective. The same applies to any ancillary and additional arrangements.
- 15.2 If these Purchase Terms are provided to the Supplier in various language versions, the German version shall be authoritative.
- 15.3 If a provision of the contract, including these Purchase Terms, is or becomes invalid in whole or in part, the validity of the remaining provisions of the contract shall not be affected by the invalidity of said provision. The invalid provision is to be replaced by a provision that comes closest to the economic purpose of the invalid provision, without being invalid.