

## **General Terms and Conditions of Purchase** **B.PRO GmbH** **B.PRO Kunststofftechnik GmbH**

Status: November 2021

### **1. Scope**

- 1.1 The present General Terms and Conditions of Purchase shall apply to all and any business dealings (deliveries and services) with the supplier even if no express reference is made to these terms. We do not allow any terms to the contrary or any deviating terms used by the supplier, unless such have been expressly approved by us in writing. In particular, the acceptance of deliveries or services or payment shall not imply consent.
- 1.2 Our General Terms and Conditions of Purchase shall apply only with respect to entrepreneurs.

### **2. Conclusion of Contract**

- 2.1 Offers and quotations prepared and issued by the supplier shall be free of charge and without commitment on our part.
- 2.2 Our order shall be binding upon us only if it is confirmed in text form [*“text form” as defined under § 126b BGB - German Civil Code -*] by the supplier within a time period of one week at the latest.

A contract shall only be deemed concluded if – also in ongoing business transactions – the order placed or agreement made orally or by phone as well as any collateral agreements hereto are confirmed by us in writing or in text form (i.e. also by way of fax or email).

- 2.3 If the confirmation of order deviates from the order, especially as regards prices or delivery periods and/or delivery dates, the supplier must inform us thereof separately. Such deviations shall only become an integral part of the contract if confirmed by us in text form.
- 2.4 If, upon conclusion of the contract, errors on our part occur through no fault of our own, e.g. on account of transmission errors, misunderstandings etc., any claims for compensation of damages asserted against us shall be excluded. Any obvious errors (e.g. spelling or calculation errors) and/or incomplete information in an order including the order documents must be pointed out to us by the supplier so that we can correct and/or complete the information before acceptance; otherwise, the contract shall be deemed not concluded.
- 2.5 The supplier shall be required to either confirm our order in writing within a time period of 5 days or to execute the order without reservation, in particular by dispatching the goods (acceptance).

Delayed acceptance shall be deemed a new offer and shall require our written acceptance.

- 2.6 Up until completion of execution we shall have the right to demand modifications regarding condition and quality, delivery or delivery period of the ordered item and/or the ordered service, unless such cannot be reasonably expected of the supplier.

### **3. Technical Modifications, Changes in Production**

- 3.1 Following prior information to the supplier, we shall have the right to change the specifications and request that the supplier technically adapts the delivery items accordingly. If changes to the delivery items caused on our behalf result in any additional costs relating to the unit price or one-off costs, such costs shall be borne by us if we have agreed to this beforehand in text form. If the modification caused on our behalf results in cost reductions the unit price shall be reduced accordingly to our benefit. In each case, the supplier shall inform us immediately of any changes in costs.
- 3.2 Any changes in production, including but not limited to changes in tools, use of new production methods or change or relocation of production sites, changes of the material used, the packaging, packaging units, load carriers (e.g. pallets), other factors significantly influencing the supply relationship as well as changes with regard to sub-suppliers, shall only be permitted with our previous consent in text form. Notifications must be sent to us in written or text form (i.e. also by way of fax or email) in the form of a PCN (Product Change Notification).

### **4. Framework Orders, Call-offs**

- 4.1 With framework orders or standing orders the respective quantities and types to be delivered shall be notified by us by individual call-offs. Unless otherwise agreed, such call-offs shall be binding unless the supplier objects to them in text form within a period of 3 working days from receipt of the call-off.
- 4.2 If the supplier is not in a position to comply with the call-off times the provision laid down in item 6.2 hereof shall also apply.

### **5. Risk Management with respect to the Procurement of Raw Materials and Components**

- 5.1 The supplier undertakes to pursue appropriate risk management with respect to the procurement of raw materials and components of the product as well as capacity utilization. By doing so, the supplier ensures a consistently stable supply situation, as per the agreement, of raw materials and components for his own production and of products for our production. This shall apply in particular to single-sourcing and electronic components.
- 5.2 We shall have the right to demand documented evidence from the supplier to prove that he has performed such risk management including all required implementation measures. Furthermore, all information and findings resulting from the risk management, which could have a negative impact on our supply situation, must be communicated to us immediately in writing.

### **6. Due Dates and Default**

- 6.1 The delivery dates and delivery periods stated by us in the order shall be binding. If the delivery period is not stipulated in the order and has not been otherwise agreed, the delivery period shall be

two weeks from conclusion of contract.

Any deviations in the acknowledgement of order shall only be authoritative if we have consented to them in writing.

Receipt of the delivery item and/or complete execution of the service at the agreed place of performance or the place of performance stipulated by us shall be authoritative for compliance with the delivery date or deadline.

- 6.2 As soon as it becomes apparent to the supplier that deliveries or services might be delayed, the supplier must immediately inform us thereof in text form and jointly agree a new date with us. The binding effect of the agreed date shall not be affected thereby. Any extra costs incurred thereby shall be borne by the supplier.
- 6.3 If deliveries or services are performed prior to the stipulated delivery date, we shall have the right to reject such deliveries or services. Furthermore, partial deliveries and partial services may also be rejected by us. If the supplier fails to perform his services or fails to perform them within the agreed delivery period or by the agreed delivery date or if the supplier is in default, our rights shall be governed by the provisions laid down by law, especially our right to withdraw from the contract and to claim damages. The provisions of item 6.4 below shall remain unaffected hereby.
- 6.4 In case of default of the supplier we shall be entitled to claim a contractual penalty of 0.1% for each commencing day of the delay, however not exceeding 5% of the order value. Such contractual penalty may be asserted by us until full payment has been made for the item/service which was delivered late. The contractual penalty shall be offset against the default damage to be compensated by the supplier. Any claims for further damage shall not be excluded by the contractual penalty. All and any damage and costs incurred by the delay in delivery shall be compensated to us - including but not limited to damage and costs caused by production downtime as well as additional purchases which may have become necessary. Any unconditional acceptance of delayed deliveries or services shall not constitute a waiver of any claims to which we may be entitled on account of the delayed delivery or service.
- 6.5 If the supplier is in default and after an additional period has been set - unless such can be waived in accordance with the law - we shall have the right, at our discretion, to withdraw from the contract, either in whole or in part, and/or to claim damages. Any further claims under the law shall be unaffected thereby. If deadlines or service are repeatedly missed and if delivery or service is repeatedly inadequate we shall have the right to withdraw from the contract, either in whole or in part, also with respect to deliveries or services not yet due or not yet performed or arising out of framework orders or standing orders or from other agreements or contracts. Any further claims shall not be affected thereby.
- 6.6 If we are not able to accept the delivery or service due to circumstances which we cannot prevent despite taking reasonable care, the date of acceptance shall be postponed by the length of time the impediment continues. If, on account of these circumstances, acceptance is not possible for a time period exceeding 6 months, we shall be entitled to withdraw from the contract, either in whole or in part. In such case, the supplier shall not be entitled to any damage claims.

## **7 Place of Performance, Passing of Risk, Replacement Parts, Force Majeure**

- 7.1 Place of performance for all deliveries and services of the supplier shall be the place of performance stipulated by us.
- 7.2 Dispatch of a consignment shall be notified to us by dispatch note if such has been expressly stipulated in the order.
- 7.3 The risk of complete or partial loss, of damage or other deterioration of the delivery item shall pass to us after delivery is taken at the place of performance stipulated by us.
- 7.4 The place of performance is stipulated by us in the order. If the place of destination is not stipulated and nothing else has been agreed, delivery must be made to our principal place of business in Oberderdingen. The respective place of destination shall also be the place of performance for the delivery, also for supplementary performance, should such apply ("obligation to be performed at the creditor's place of business").
- 7.5 The supplier undertakes to supply us with replacement parts at reasonable terms for the entire duration of the prospective technical use of the delivery items, and for at least 10 years after the end of the series production of our products. If the supplier intends to discontinue the production of a delivery item for us, including but not limited to replacement parts, semi-finished products or raw material for us, the supplier must inform us thereof in text form at least 12 months before such production is discontinued, so that a final purchase of such items can be agreed for the future time.
- 7.6 Force Majeure, labor disputes, disruptions in operations for which we bear no responsibility, civil disturbances, governmental measures and other events beyond our control shall release us from the obligation to accept the delivery items and services punctually for the duration of such events. Should such events continue for a period of time that is not insignificant and lead to a reduction in our requirements – also as a result of procurement from another source which may have been necessary in the meantime – we shall have the right to withdraw from the contract, either in whole or in part, up until the expiry of one month following the termination of the event. Any other rights we may have shall be unaffected thereby.

## **8. Prices, Payment, Cost Savings**

- 8.1 The agreed prices shall be fixed prices and shall be inclusive of freight, packaging and other ancillary costs free to the place of performance designated by us. Unless otherwise agreed in text form, prices shall be DDP (Incoterms 2020). Any price increases, irrespective of the reason thereof, also in case of framework contracts or standing supply contracts, shall only be recognized by us if an express agreement has been concluded to this effect in text form.

It the supplier has assumed assembly or installation and unless otherwise agreed the supplier shall - subject to any deviating arrangements - bear all necessary ancillary costs involved, such as travel expenses, provision of tools and daily allowances.

- 8.2 Invoices shall be issued without delay after dispatch of the delivery items and/or complete performance of the services. Invoices shall be issued as originals, separately for each order, specifying the order number; VAT shall be stated separately in the invoice. Any invoices that are not issued in due form shall be deemed as not issued. Only deliveries, services and invoices that are free from defects and that conform to the order shall oblige us to effect payment.
- 8.3 We shall accept e-invoicing, only if
- such invoice is sent by the supplier to the email-address [invoice\\_0002\\_incoming@bpro-solutions.com](mailto:invoice_0002_incoming@bpro-solutions.com);
  - the supplier creates a PDF document for each invoice;
  - the supplier indicates our respective order number / order references on each electronically transmitted invoice and
  - the supplier ensures that all and any additional statutory provisions, in particular all requirements for the issuance of invoices and all mandatory information in accordance with Section 14 [4] of the German Value Added Tax Act (UStG) required for input tax deduction are complied with.

If the invoice was sent to the email address stipulated in this item 8.3 the invoice must not be sent to us by mail as hardcopy – unless we expressly request the supplier to provide such hardcopy.

The email address stipulated in this item 8.3 shall be used exclusively for invoices. It shall not, in particular, be used for dunning letters, order confirmations or other correspondence.

- 8.4 Unless otherwise agreed, payment shall be effected within 30 days upon receipt of the invoice with 3% discount, within 90 days net. The discount shall be deducted from the amount of the invoice including VAT. The terms shall start with the receipt of the invoice or, if the delivery item is received after the invoice, with the receipt of the goods, however, under no circumstances prior to the agreed delivery date.
- 8.5 Checks and bills of exchange shall be deemed as payment.
- 8.6 Claims the supplier may have against us may only be assigned with our prior consent.
- 8.7 Any cost savings ensuing from the cooperation between us and the supplier shall be divided equally between the parties. If the share of one party is significantly higher, the division shall be made in proportion to the shares contributed.

## **9. Compliance with Legal Provisions, Substance Prohibition, Export, Customs**

- 9.1 The supplier shall ensure that all statutory provisions, ordinances and other regulations relating to each delivery item are complied with – including but not limited to all and any safety-related and environmental provisions in the countries of the European Economic Area, Great Britain, Switzerland, the US or in the countries communicated by us, in which we intend to distribute the products. In particular, the provisions laid down in the EU directives must be complied with in all deliveries.
- 9.2 For each individual delivery item the supplier undertakes to comply in every respect with the requirements and obligations relating to substance prohibition in accordance with the respective legal

provisions and regulations. This shall apply in particular to the requirements and obligations of the REACH Regulation EC No. 1907/2006, the RoHS Directive RL 2011/65 EU, as amended, including the respective amendments and supplements, and their transposition into national law by the EU member states.

At the beginning of each calendar year the supplier shall of his own accord, without being specifically requested to do so, provide us with written, product-specific declarations of conformity in German and English which shall also apply with respect to our customers and which we can pass on to our customers.

- 9.3. Over and above the statutory provisions, none of the substances recorded in our Material Prohibition and Avoidance List may be deployed. The current version of this list can be retrieved and/or printed using the following link: <https://www.bpro-solutions.com/en/service/company/responsibility/suppliers.cfm> which will be provided by us free of charge upon first request at any time.

The supplier is under the obligation to retrieve the Material Prohibition and Avoidance List at regular intervals, at least once every calendar year.

- 9.4 The supplier shall be responsible for ensuring that the items delivered by the supplier are not subject to any export restrictions. Should such export restrictions apply or come into consideration, the supplier must expressly advise us thereof in text form before delivery.
- 9.5 On request, the supplier shall provide us with certificates of origin, supplier's declarations, statistical goods numbers and/or references as well as additional documents/data which may be necessary to comply with export requirements.
- 9.6 Imported delivery items must be delivered duty paid. The supplier undertakes to allow inspections by customs authorities, to submit all required declarations and information and to obtain all necessary official approvals at its expense.
- 9.7 In case of deliveries and services effected out of an EU country other than Germany the EU VAT identification number must be stated.

## **10. Goods for Resale**

- 10.1 By way of derogation, the following provisions of this item 10 shall apply to goods for resale. Goods for resale within this meaning shall be products that are not produced by us but are finished products purchased from the supplier and directly resold by us.
- 10.2 The quality of the goods for resale shall be the responsibility of the supplier. The supplier must ensure that the goods for resale delivered to us are free from defects.
- 10.3 The supplier must check and inform us without delay whether the goods for resale meet the requirements of the regulations to be complied with in the countries in which we intend to distribute the merchandise.

- 10.4 We shall not be under the obligation to check whether the goods for resale meet the requirements of the regulations to be complied with in the countries in which we intend to distribute the merchandise. At the latest when placing our order, we will inform the supplier in which countries we intend to distribute the merchandise.
- 10.5 The supplier shall indemnify us and hold us harmless from and against all and any claims asserted by any third party if the goods for resale do not meet the requirements of the regulations to be complied with in the countries in which we intend to distribute the merchandise.
- 10.6 The supplier shall in particular check, ensure and provide us with evidence both of his own accord and upon request that
- all and any regulatory approvals and registrations required have been obtained, are maintained and are up-to-date and that
  - all and any directions given by the competent authorities of the respective country in which the products were manufactured and are distributed by us are complied with.

Furthermore, at the beginning of the business relationship as well as in the event of any changes, reissues or extensions, the supplier will submit to us both of his own accord and upon our request all and any required regulatory approvals and registrations.

## **11 Compliance, AEO, Supply Chain**

- 11.1 The supplier undertakes to comply with our ethical business policy laid down in our Code of Conduct, the current version of which can be retrieved and/or printed using the following link: <https://www.bpro-solutions.com/en/service/company/responsibility/suppliers.cfm> which will be provided by us free of charge at any time upon first request.

In the event of a breach on the part of the supplier we shall be entitled to terminate all and any contracts concluded between us and the supplier in writing and without notice and without any further obligations or liability vis-à-vis the supplier.

The supplier will indemnify us and hold us harmless from and against all and any damage, loss, payments withheld, receivables and claims of any third party arising out of or in connection with such termination.

- 11.2 We and/or our corporate bodies and representatives shall be entitled to inspect, audit and make copies from the supplier's accounts and records if and to the extent such relate to the execution of the contracts concluded between us and the supplier. The accounts and records will be inspected to the extent appropriate at the usual place of business and during ordinary business hours. The supplier will promptly and fully cooperate in the case of each inspection or audit conducted either by us or on our behalf and will give complete and thorough/correct answers to our questions and provide the requested documents.
- 11.3 In order to meet the requirements for supply chain security standards we hold the AEO status (AEO = Authorized Economic Operator). The supplier shall use its best efforts to support our efforts to

ensure supply chain security by either (a) applying for the AEO-F or AEO-C standard or a respective national equivalent for himself or by (b) making a security statement.

- 11.4 The supplier undertakes to enable us to fully and properly comply with its own obligations under the Supply Chain Sourcing Obligations Act ("Lieferkettensorgfaltspflichtengesetz") by providing us with appropriate written notifications. Therefore, Supplier shall send us corresponding information upon first request, unless this information is demonstrably not required for the aforementioned purpose.

## **12. Supplier Management**

- 12.1 If the supplier intends to have contractually agreed services provided by any third party, either in whole or in part, such shall require our prior written consent, which must not be unreasonably withheld or be subjected to any conditions or delay. The supplier may only deploy sub-suppliers that are reliable and capable of meeting the respective quality requirements and have adequate liquidity and credit ranking. The supplier must apply the present General Terms and Conditions of Purchase accordingly within the scope of his supplier management with respect to his sub-suppliers. Ongoing monitoring of the sub-supplier must be substantiated to us upon request.

Upon request, the supplier must disclose his sub-suppliers to us.

- 12.2 The present General Terms and Conditions of Purchase shall also apply to suppliers specified by us, irrespective of the contractual relationships between the supplier, the sub-supplier and ourselves.
- 12.3 The supplier shall also be responsible for the quality of the products, materials or services purchased by him. Such shall also apply if the procurement source for the products, materials or services that are to be purchased has been contractually agreed between us and the supplier and such source has been approved by us.
- 12.4 The supplier shall be liable for any faults on the part of his sub-suppliers as if they were his own faults.

## **13. Change Management**

The supplier shall notify us in writing and without delay of any intended quality-relevant changes as well as any planned changes to his relevant production factors and must obtain our written approval before implementation, whereby such approval must not be unreasonably refused or be subjected to any conditions or delay by us.

Notification shall be given in due time before the intended and/or required changes to enable us to check whether the changes might have adverse effects.

The following changes shall be deemed changes within the meaning of this provision - whereby the list only provides examples and shall not be deemed exhaustive:

- changed environmental conditions in the environment in which the products are manufactured, stored or tested,

- new or changing sub-suppliers,
- changes relating to a sub-supplier,
- a change in production methods / production material at the supplier or sub-supplier,
- changes from manual to automated processes,
- changes to an inspection plan or a plan on outgoing goods inspection,
- changes to the requirements regarding equipment or validation,
- new equipment,
- process deviations,
- process change,
- changes in the product design, of components or processing aids (also at the sub-suppliers),
- changes to the product tests,
- changes to product labelling or packaging,
- changes to product part numbers,
- relocation of the production site,
- change of raw materials and/or components, including changes in the composition of the materials or changes in specifications (e.g. processes, components, product, tests)

#### **14. Incoming Goods Inspection at the Supplier**

The supplier undertakes to conduct and document an incoming goods inspection of the products purchased and provided by the supplier. The methods applied in such incoming goods inspection shall be product-specific and shall be aligned to the safety relevance of the products purchased by the supplier. It must be ensured that only products free from defects will be used in the further production process.

#### **15. Reduced Incoming Goods Inspection and Requirement to Give Notice of Defects**

The supplier shall only supply delivery items which have been continuously inspected and have been approved and shall therefore forego a detailed incoming goods inspection at our site. The provisions laid down by law shall apply to the commercial obligations to inspect the delivery items and give notice of defects (Sections 377, 381 of the German Commercial Code (HGB)) with the following proviso: Upon receipt and within a reasonable period of time we will only check the identity and check for any external damage of the delivery items in transport. Subsequently, we will only inspect the delivery items within the framework of the ordinary course of business during their use in production. If acceptance has been agreed there will be no obligation to inspect the delivery items. Our obligation to notify defects that are detected at a later date shall remain unaffected. The term shall be deemed to be complied with if the complaint is sent either by us - or by our customer in the event of drop shipments - in text form on the last day of the term. In this respect, the supplier shall waive the defense of delayed notification of defects.

The supplier will ensure that his liability insurance accepts the aforesaid modification of the statutory provisions without prejudice to the coverage of such liability insurance.

#### **16. Material Defects and Defects of Title**

- 16.1 Unless otherwise stipulated in the following, the provisions laid down by law shall apply to our rights relating to material defects and defects of title of the goods (including incorrect delivery and short delivery as well as incorrect assembly, inadequate assembly or operating instructions or instructions for use) as well as to other breaches of duty by the supplier.

The agreed specifications on the product condition and quality of the delivery items shall apply as a guarantee of quality and durability for the duration of the warranty period of 36 months. According to the statutory provisions the supplier shall in particular be liable for ensuring that the goods have the agreed condition and quality when the risk passes to us. Agreement on condition and quality shall be deemed to be those product specifications that – in particular by being named or referenced in our order – are the subject-matter of the respective contract or that have been incorporated into the contract the same way as the present General Terms and Conditions of Purchase. In this respect, it makes no difference whether the product specification originates from us, the supplier or the manufacturer.

- 16.2 The supplier shall be responsible for ensuring that, as to their sale and use, the items delivered and services provided comply with the provisions laid down by law and public authorities in the countries of the European Economic Area, Great Britain, Switzerland, the US or in the countries communicated by us, in which we intend to distribute the products, and that they do not infringe any intellectual property rights or any other third-party rights. The delivery items and services must comply with the respective state of the art applicable at the delivery date or foreseeable for the future as well as with other statutory provisions, technical test rules and accident prevention provisions. In particular, DIN-, EN-, ISO-standards, VDE [*German Electrical Engineering Association*] regulations as well as other standards and guidelines belonging to the state of the art must be complied with. The supplier shall be responsible for the quality of the items delivered and services provided including the tests therefore required, in particular within the framework of the agreed specifications.

In derogation of Section 442 [1], sentence 2, BGB we shall also be entitled to unrestricted claims for defects if the defect was not known to us upon conclusion of the contract due to gross negligence.

- 16.3 Acceptance by us will always be subject to any claims which may be asserted with respect to liability for material defects.

- 16.4 We shall be entitled to the statutory rights in the event of material defects and defects of title without restriction. We shall be entitled to select the type of supplementary performance (remedy of defects or replacement). The supplier shall bear all and any expenses required for the purpose of remedy of defects or replacement. If the supplier fails to comply with the request for remedy of defects or replacement within a reasonable time or if the supplier fulfills the request only inadequately or if immediate remedy of defect is required for urgent reason we may have the defects remedied at the expense of the supplier or remedy them ourselves or make contingency purchases at the expense of the supplier.

If we demand subsequent delivery or rework from the supplier, the supplier shall, to this purpose, also disassemble a defective delivery item and subsequently replace it with a defect-free delivery item. If the supplier is not in a position to do so at reasonable expense or if such is not possible for other reasons we shall do this for the supplier at the expense of the supplier.

Alternatively, we may also demand that the price of a defective delivery item be adequately reduced or we may hold the delivery item ready for pick-up for the supplier and either retain the purchase price or demand repayment of the purchase price or dispose of the defective delivery item at the expense of the supplier.

- 16.5 If costs are incurred by us on account of defects pertaining to the item delivered or the service provided, including but not limited to transport, travelling, labor or material costs or costs of an incoming inspection exceeding the ordinary extent or for sorting measures, the supplier shall refund these costs to us. The costs to be reimbursed by the supplier shall include but not be limited to costs of assembly and disassembly, recall costs and costs of production downtime (inclusive of line stoppage). The obligation to reimburse costs shall apply irrespective of whether such costs are incurred at our site or at our customer's site.

Furthermore, as per the provisions laid down by law we shall be entitled to claim reimbursement of expenses as well as damages, including but not limited to compensation for lost profit, production downtime, damage to other machines, injury to reputation, damage due to contractual penalties or flat-rate compensation imposed by our end customers.

- 16.6 If, even though the warranty period has expired, we remedy defects arising from a deficiency caused by the supplier for our customer free of charge or only for a share in the costs in order to avoid damage to our image (goodwill) the supplier undertakes to participate in the costs by assuming at least 50% of the costs incurred by us. In each individual case, a different rate may be agreed.
- 16.7 The supplier shall ensure that the items delivered by the supplier are traceable. If a defect is detected, it must be possible to trace it to a specific delivery in order to determine the time period regarding liability for defects and to be able to identify the total amount of the affected delivery items. If, in the event of a material defect and/or product liability, traceability is not possible the supplier shall compensate us for any detriment incurred by us on account of this. If the current deadline for liability for material defects of a defective delivery item cannot be determined for lack of traceability the supplier shall not be entitled to plead the statute of limitations unless the supplier can prove that the time period for liability for material defects has definitely expired.
- 16.8 If claims for damages are asserted against us by one of our customers on the grounds that the delivery items we purchased from the supplier – whether built-in or not – are defective, and to the extent that notification of defects has been given within two weeks after occurrence of the defect and the defect did not become statute-barred more than three months ago, in our relation with the supplier and within the scope of mitigation of damage we shall be under no obligation to plead the objection stipulated under Section 377 of the German Commercial Code (insufficient inspection or notification of defects) or to plead statute of limitations against our customer.
- 16.9 Supplementary performance shall also include disassembly of defective goods and reassembly, if the goods, in accordance with their type or nature and their intended use, were incorporated into another object or attached to another object.

The supplier shall also bear the costs if the delivery items have been shipped to a place other than the place of delivery.

Our legal entitlement to reimbursement of the respective expenses shall remain unaffected.

16.10 Without prejudice to our rights laid down by law and the stipulations under item 16.9 above the following shall apply: If the supplier fails to meet his obligations for supplementary performance – at our discretion either by remedy of the defect (repair) or by delivery of a defect-free item (replacement) – within a reasonable time period set by us we shall have the right to remedy the defect ourselves and claim from the supplier compensation for the expenses thus incurred and/or can request a corresponding advance payment. If the supplementary performance by the supplier has failed or cannot be expected of us (e.g. due to special urgency, threat to operational safety or imminent occurrence of damage of a disproportionate nature) a deadline does not need to be set; we will inform the supplier without delay, beforehand if possible, of such circumstances.

16.11 The supplier shall be liable for any faults on the part of his sub-suppliers as if they were his own faults.

## **17. Product Liability and Quality Assurance**

17.1 If we are held liable under the Product Liability Act or other provisions for a product defect or if we otherwise suffer damage in connection with the delivery of a defective delivery item, including but not limited to damage on account of necessary recalls, upgrading, etc., upon first request the supplier shall indemnify and hold us harmless from and against all and any damage if and to the extent that such damage has been caused by a defect in the item delivered by the supplier.

17.2 Within the scope of his indemnity obligation, the supplier must bear all costs and expenses, in particular the costs arising out of or in connection with claims asserted by any third party, including costs on account of recall actions conducted by us as well as any legal costs.

17.3 The supplier undertakes to take out, maintain and upon request substantiate to us sufficient product liability insurance of a minimum coverage of EUR 5 million for each claim.

17.4. The supplier shall establish a quality assurance system suitable as regards type and scope and in compliance with the state of the art and shall document all relevant data. Such quality assurance documentation shall be maintained and stored for a minimum of 10 years following the end of series production. Longer retention periods (up to 20 years) are recommended bearing in mind the limitation periods for product liability claims that apply in other countries (e.g. the US).

17.5 Subject to being given reasonable prior notice the supplier shall grant us and our authorized agents (if applicable, accompanied by agents of our customers) access to its premises as well as to the relevant documents and records at any time during ordinary business hours for the purpose of carrying out audits (system, process and product audits); during such visits the supplier will provide an appropriately qualified employee to answer questions and provide information.

## **18. Intellectual Property Rights**

- 18.1 The supplier shall ensure that the items delivered or the services provided by the supplier do not infringe any domestic or foreign intellectual property rights and guarantees that we are completely free and authorized under copyright law to use them and trade with them both domestically and abroad. In the event of us being held liable by third parties for an infringement of domestic or foreign intellectual property rights relating to the items delivered or the services provided, upon first request the supplier shall indemnify and hold us harmless from and against all and any claims and damage incurred thereby. Such entitlement shall apply irrespective of any fault of the supplier. Any further legal claims we may have for defects of title regarding the items delivered to us or regarding the services provided shall be unaffected thereby.
- 18.2 On request, the supplier shall inform us of all and any intellectual property rights he and/or his licensor holds in connection with the delivery item or the services provided. If the supplier becomes aware of any infringement of intellectual property rights he shall inform us thereof in text form without delay and of his own accord.
- 18.3 If the delivered item or the service provided infringes any intellectual property rights the supplier undertakes, at his own discretion and at his own expense, to either modify the item delivered or the service provided in such a way that our use thereof does not infringe the intellectual property rights but so that the delivered item or the service provided complies with the contractual agreements, or to obtain the right of use and exploitation for us. If the supplier fails to do so, the supplier undertakes, at our discretion, to take back the delivery item or the service provided against reimbursement of costs and/or to compensate us for all and any damage incurred.

## **19. Rights of Ownership**

- 19.1 We shall retain title to all and any tools, molds, samples, models, profiles, drawings, standard specification sheets, artwork masters, gages and other records and information, in any form whatsoever, provided by us; these shall not be passed on to any third party nor used otherwise for the supplier's own purposes without our express consent. They shall be protected by the supplier against unauthorized access or use and, unless otherwise agreed, must be returned in good condition together with the delivery at the latest – in case of long-term supply contracts at the end of the supply relationship. The supplier shall not be entitled to retain any copies thereof. There shall be no right of retention. Tooling owned by us must be marked as our property. The supplier must provide us with evidence of sufficient insurance coverage.
- 19.2 If tools, drawings or other manufacturing equipment are produced or prepared by the supplier upon our order and at our expense, it shall be agreed that title to such items shall pass to us immediately after their production. If we only pay a share of the costs we shall acquire co-ownership in proportion to our share in the costs. The supplier shall have the revocable right to keep these items in safe custody for us free of charge. We shall be granted all and any copyrights to these items for our sole usage. The supplier shall not be entitled to use these items beyond the scope of the order without our consent. The supplier shall be entitled and obliged to keep the items in safe custody, which right and obligation shall be revocable. The supplier shall mark the items in such a manner that our title to them shall also be documented vis-a-vis third parties. The supplier shall have no right of retention relating to these items.

19.3 Reservation of title by the supplier shall only apply if such refers to our payment obligations for the respective delivery items for which the supplier reserves title. Any extended or expanded reservation of title of the supplier shall not apply.

## 20. Right of Use

We shall be granted a non-exclusive, irrevocable, world-wide, royalty-free, transferrable as well as sub-licensable and indefinite license to all technical information, records and data, documentation, software, object source codes, other works as well as intellectual property rights generated within the scope of the execution of a contract or necessary for the contractual usage of the deliveries and services. Such license shall include but not be limited to the right to use, process (e.g. by modification, reconfiguration or supplementation), duplicate, disseminate and sell the contractual items for our internal use and for use in connection with one of our products or for third-party use as well as to incorporate them in changed or unchanged form into one of our own products.

## 21. Data Protection

The supplier undertakes to comply with all provisions of data protection law as amended from time to time and will comply with such provisions. The supplier shall ensure that its employees are aware of their data protection obligations and, if applicable, are obligated to comply with data protection provisions. Proof of the assurance of this obligation shall be submitted to us or our data protection officer upon request.

If the supplier processes personal data from and on our behalf, he shall conclude an agreement with us on data processing. If the supplier processes personal data from us on its own responsibility and for its own purposes, the conclusion of the above-mentioned agreement shall be dispensable. This shall also apply in the event that no personal data is processed by the supplier within the scope of the provision of services.

Our privacy policy can be found at: <https://www.bpro-solutions.com/en/service/imprint.cfm>

## 22. Confidentiality, Publicity

22.1 All and any technical data and other commercial or technical information not in the public domain which is disclosed to the supplier on account of the business relationship with us shall be treated as confidential by the supplier. Such information may only be used for the execution of our orders and may only be disclosed to such employees who need to be brought in for the execution of the order.

The supplier shall not be entitled to take apart or disassemble and/or analyze, neither in whole nor in part, any confidential information disclosed by us, including but not limited to prototypes, samples/models, tools or data carriers.

Should the confidential information disclosed to the supplier include any software, the following shall apply: Without our prior written consent the software must neither be processed nor changed, nor derived from the software of the source code (e.g. by decompiling, debugging or disassembling), neither in whole nor in part.

22.2 Without our written [*written form*] as defined under § 126 BGB] consent, the supplier shall not be entitled to report on or advertise the collaboration with us or in particular to include us in his reference list or use our logo.

## 23. Software

23.1. Software shall be delivered to us on customary data storage devices in machine-readable code, including user documentation.

23.2 If software is specifically developed for us we shall be provided with the source code, including manufacturer documentation.

23.3 For the software developed for us and for the respective manufacturer documentation and parts thereof the supplier shall grant us the right of use and exploitation in accordance with item 20 hereof. In case of any adverse third-party rights the supplier and we shall contractually agree the reasonable scope of our license.

23.4 The supplier shall not be permitted to duplicate, process or otherwise use the performance results developed for us, neither in whole nor in part.

23.5 The supplier shall not be permitted to publish the performance outcomes developed for us, neither in whole nor in part.

23.6 The supplier shall procure and guarantee us the non-exclusive, transferrable right, unrestricted as to space and time, to use and copy the delivered software for integration into other products or to have it used or copied by our distributors and affiliated companies as defined under item 26 hereof.

23.7 If procurement and guarantee of a right specified in this paragraph is not possible from a legal point of view, the supplier shall inform us thereof in writing before conclusion of the contract. Thereby the supplier shall also provide us with the reasons why procurement and granting of such right is not legally possible.

23.8 The supplier shall guarantee that at the time of delivery no part of the software delivered to us contains any malware which is intended and/or able to provide the supplier or any third party unauthorized access to our computer system or to read, write, copy, change, damage or delete software or data on our computer systems without our consent or to initiate other processes with, in or on our computer systems that are not authorized by us.

## 24. Limitation of Liability

We shall be liable for intent and gross negligence. We shall only be liable for slight negligence in case of a breach of essential contractual obligations which go to the root of the contract or the breach of which endangers the fulfilment of the contractual purpose. Also in these cases damages shall be limited to the foreseeable damage. In other respects, in case of slight negligence damage claims

asserted by the supplier shall be excluded, irrespective of the legal grounds thereof. This limitation of liability shall not apply in case of injury to life, limb or health.

## **25. Work Performed in our Factories**

Any person performing work in one of our factories in fulfilment of a delivery or service shall observe the relevant legal provisions as well as site rules of the factory concerned, the current version of which can be retrieved and/or printed using the following link: <https://www.bpro-solutions.com/en/service/company/responsibility/suppliers.cfm> which will be provided by us free of charge upon first request at any time. In case of non-compliance we shall assume no liability for any accidents occurring in our sphere of control – unless such accident was caused by us by intent or gross negligence. The rules and regulations in force for entering and leaving our facilities shall be observed.

## **26. Transfer of Rights and Obligations**

Any rights and obligations arising out of supply and service contracts shall not be transferrable to any third party. However, we shall have the right to pass on any rights and obligations from contracts on deliveries and services to be performed for us to our affiliated companies. An affiliated company for this purpose shall be a company directly or indirectly controlling us, directly or indirectly controlled by us or having direct or indirect joint control over both of us. Therefore, such affiliated companies shall not be deemed third parties within the meaning of these provisions.

## **27. Statute of Limitation**

- 27.1 Unless otherwise stipulated in the following, the mutual claims of the contracting parties shall become statute-barred in accordance with the provisions laid down by law.
- 27.2 In derogation of Section 438 [1], number 3, BGB, the general limitation period for claims for defects shall be 3 years from the passing of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall apply to claims for defects of title mutatis mutandis, whereby the statutory limitation period for the claim of a third party for return in rem (Section 438 [1], number 1, BGB) shall remain unaffected; furthermore, claims for defects of title shall not become statute-barred for as long as the third party is still in the position to assert the claim against us – in particular because it is not yet statute-barred.
- 27.3 The limitation periods under the law governing the sale of goods, inclusive of the aforesaid extension, shall apply to all contractual claims for defects, to the extent permitted by law. They shall be extended by the period required by the supplier for repair or replacement measures, from receipt of our notification of defects up until the point in time at which the supplier declares the end of such measures or refuses further remedy of defects or replacement delivery.
- 27.4 If and to the extent that we are also entitled to non-contractual claims for damages based on a defect the standard limitation period laid down by law shall apply (Sections 195, 199 BGB), unless, in an individual case, application of the limitation periods stipulated under the law governing the sale of goods results in a longer limitation period.

## **28.1 Place of Performance, Jurisdiction, Applicable Law**

- 28.1 Place of performance for all and any liabilities arising out of the contract, in particular for delivery and payment, for both parties shall be the principal place of business of our company or the place of performance stipulated by us.
- 28.2 If the supplier is a registered trader with seat in the European Union, Switzerland, Norway or Iceland at the time proceedings are initiated, place of jurisdiction for all and any legal disputes arising out of the contractual relationship, its creation and effectiveness shall for both parties be the competent court at the principal place of business of our company. In derogation hereof, we may, at our discretion, also bring an action at the seat of the supplier.
- 28.3 To the extent that item 28.2 above is not applicable, all and any disputes arising out of the contractual relationship, its creation and effectiveness shall be settled by final and binding decision in accordance with the Rules of Arbitration of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)) excluding the jurisdiction of the courts. Place of arbitration shall be Karlsruhe, Germany. The language of the arbitration proceedings shall be German.
- 28.4 The contractual relationship shall be governed by German law excluding the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).