

# General Terms and Conditions of Supply

## 1 General

- 1.1 These General Terms and Conditions of Supply shall be binding if declared applicable in the quotation or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these General Terms and Conditions shall only apply if expressly acknowledged by BUSS in writing. BUSS means and refers to Buss AG, Pratteln, Switzerland, or, if Buss, Inc. USA, Buss Japan Ltd or another entity belonging to the Buss Group issued the quotation or order acknowledgement to the customer, such entity.
- 1.2 All agreements and legally relevant declarations of the parties to the contract must be in writing and duly signed by authorized persons in order to be valid. The application of any conflicting terms and conditions of the customer is excluded to the fullest extent without need for a specific or additional statement of rejection. These General Terms and Conditions for Supply shall also apply to repeat orders and subsequent supplies. The complete supply contract between the parties shall consist of the following documents, whereby, in the event of any contradictions or inconsistencies, the following order of precedence shall apply:
- (1) Separate order acknowledgement issued by BUSS (if applicable);
  - (2) BUSS' quotation;
  - (3) BUSS' system drawings;
  - (4) BUSS' specifications;
  - (5) These General Terms and Conditions for Supply;
  - (6) Separate order placed by the customer (if applicable).
- 1.3 Any cancellation of an order or amendments to a contract shall be excluded unless authorized by BUSS in writing.
- 1.4 Should a provision of these General Terms and Conditions of Supply be wholly or partly invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In such a case, the invalid, illegal or unenforceable provision shall be replaced by a provision which, to the extent admissible, comes closest to the purpose and intended legal and economic effect of the invalid, illegal or unenforceable provision.

## 2 Scope of supplies and services

The supplies and services of BUSS are exhaustively specified in the quotation, system drawings and specifications or the order acknowledgement and in appendices thereto. BUSS shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

## 3 Quotation and technical documents

- 3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for in the quotation and technical documents are only binding in so far as having been expressly stipulated as such.
- 3.2 BUSS retains all legal titles and copyrights to technical documents provided by BUSS to the customer. The customer recognizes these rights and shall – without previous written consent of BUSS – not make the quotation and these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

## 4 Special protection and information obligations on customer's part

- 4.1 The customer is obliged to follow the operating and maintenance instructions issued by BUSS or its suppliers and make these instructions, particularly those regarding safety recommendations, famil-

iar to its employees and third parties coming into contact with the supplies. If the customer fails to comply with this rule, it shall hold BUSS harmless from any claims by third parties, including its own employees.

- 4.2 The customer undertakes to inform BUSS comprehensively regarding statutory, labour agreement or any other safeguarding regulations, standard requirements and other rules which are significant for the design and technical execution of the supplies, particularly at foreign erection sites.

If the customer fails to fulfil this obligation, the customer shall also be obliged to pay the purchase price even if supplies cannot be taken over, accepted or put into operation due to non-observation of such regulations. In such cases the customer shall moreover bear the extra cost of adapting the supplies to the regulations in question, particularly to foreign regulations.

If the supplies are in contradiction to regulations which the customer neglected to point out to BUSS in accordance with this Clause 4.2, BUSS shall be free of liability towards the customer in respect of BUSS' non-observation of the regulations. The customer shall hold BUSS harmless from any and all claims as a result of injury which the customer's employees or third parties suffer as a result of the supplies, unless such injury had also been possible in spite of following such regulations. The burden of proof rests with the customer.

## 5 Prices

- 5.1 Prices shall be as set out in the quotation or in the order acknowledgement. Unless indicated otherwise, prices are net prices and shall be EXW Pratteln, Switzerland (Incoterms, 2010).
- 5.2 Any and all charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer.
- 5.3 Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to BUSS against adequate evidence in case BUSS is liable for them.

## 6 Terms of payment

- 6.1 Payments shall be made by the customer within 30 days after the date of the invoice and to the account and in the currency indicated by BUSS, in the full amount, without any set-off, withholding or deduction for cash discount, expenses, taxes, levies, fees, duties, and the like. If the customer is compelled to make any such withholding or deduction by law, the customer shall pay to BUSS such additional amounts as are necessary to ensure receipt by BUSS of the full amount which BUSS would have received without the withholding or deduction.
- Unless otherwise agreed upon, the price shall be paid in the following instalments:
- One-third as advance payment on placing the order
  - One-third on expiry of half the agreed delivery time
  - One-third as soon as the customer has received BUSS' advice that the main equipment is ready for dispatch.
- 6.2 The dates of payment shall also be binding and observed if delivery, transport, erection, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond BUSS' control, or if unimportant parts are missing, or if post delivery work is to be carried out without the supplies being prevented from use.
- 6.3 If advance payments or the contractually agreed securities (such as


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letters of credit and the like) are not provided in accordance with the terms of the contract, BUSS shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages.

If the customer, for any reason whatsoever, is in delay with a subsequent instalment, or if BUSS is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, BUSS, without being limited in its rights provided for by law, shall be entitled to refuse the further performance of the contract and to retain supplies that are ready for dispatch until new terms of payment and delivery have been agreed and until BUSS will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case BUSS does not receive adequate securities, BUSS shall be entitled to terminate the contract and to claim damages.

6.4 In case of delay with payments, the customer shall be liable for late payment interests at a rate of 4% p.a. The right to claim further damages is reserved. BUSS may suspend its performance or withhold further deliveries if payments of the customer are delayed.

**7 Transfer and reservation of title**

7.1 BUSS shall remain the owner of all supplies until having received the full payments in accordance with the contract.

7.2 The customer shall cooperate in any measures necessary for the protection of BUSS' title. In particular upon entering into the contract it authorizes BUSS to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at customer's cost.

During the period of the reservation of title, the customer shall, at its own cost, maintain the supplies and insure them for the benefit of BUSS against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that BUSS' title is in no way prejudiced.

7.3 If reservation of title as set out above cannot be achieved in the country in which the customer is located or in which the supplies are to be brought, but the reservation of other, economically equivalent rights to the supplies or other means of security are allowed, BUSS shall be entitled to such rights and they shall be deemed as agreed.

**8 Delivery time**

8.1 Delivery times and dates shall be approximate and shall not be considered to be legally binding, unless the quotation or the order acknowledgement expressly includes and confirms a binding delivery date. The delivery time shall start as soon as the contract is entered into, all payments due with the order have been made, any agreed securities have been given and the main technical points have been settled and all documents to be procured by the customer such as, but not limited to, permits, releases, etc. have been received by BUSS. Partial deliveries shall be permitted.

If the customer is behind schedule with the work the customer has to execute, including but not limited to the timely provision of

- revised or additional requests regarding specifications;
- approval of drawings; or
- other items, documentation, or materials necessary for the completion or delivery of the supplies;

the delivery time is extended by the delay caused by the customer, regardless of whether such delay is within the customer's control or not. Any specific completion date shall be extended at least by the same period of delay.

8.2 The delivery time and delivery dates shall regardless of the applica-

ble delivery terms be deemed to be observed if by that time BUSS has sent a notice to the customer informing that the supplies have left the works or are ready for dispatch.

8.3 If hindrances occur which BUSS cannot prevent despite using the required care, the delivery time is reasonably extended. Such hindrances include, but shall not be limited to, labour conflicts, in particular strikes and lockouts, serious breakdown in the works and unexpected hindrances beyond BUSS' control, provided that such hindrances can be proved to have influence on completion or delivery of the supplies. This shall also apply to late or deficient delivery on the part of BUSS' suppliers.

8.4 In case delay in delivery is caused by BUSS, claims for damages for non-performance as well as for any losses due to delay are excluded unless the default is due to gross negligence or unlawful intent. A termination or withdrawal from of the contract by the customer due to delay by BUSS is excluded.

**9 Packing**

Packing shall be charged for separately by BUSS and shall not be returnable. However, if it is declared as BUSS' property, it shall be returned by the customer, carriage paid, to the place of dispatch.

**10 Passing of benefit and risk**

10.1 The benefit and the risk of the supplies shall pass to the customer in accordance with the applicable delivery terms. If no such terms have been agreed, EXW Pratteln, Switzerland (Incoterms 2010), shall apply.

10.2 If dispatch is delayed at the request of the customer or due to reasons beyond BUSS' control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

**11 Forwarding, transport and insurance**

11.1 BUSS shall in time be notified of special requirements regarding forwarding, transport and insurance. The transport shall be at the relevant party's expense and risk in accordance with the applicable delivery terms. If no such terms have been agreed, deliveries will be EXW Pratteln, Switzerland (Incoterms 2010).

Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the customer to the last carrier.

11.2 The customer shall be responsible for taking insurance against risks of any kind.

**12 Erection and commissioning**

12.1 The customer shall be responsible for the erection, installation and taking into operation of BUSS' supplies and for (timely) preparing and making ready the required environment (statics, safety, power, cabling and other utilities).

12.2 BUSS will provide to the customer assistance for the erection control, installation and taking into operation of its supplies and instruct personnel of the customer in the operation and maintenance of its supplies if so agreed beforehand. The schedule, scope and details of any such assistance will need to be determined and agreed prior to delivery of the supplies.

Any such assistance services of BUSS and related travel are at (additional) charge on a time and materials basis. BUSS renders assistance services in workmanlike manner and with skilled personnel. BUSS does not assume any obligation to achieve particular results or to provide deliverables with its assistance services.

**13 Acceptance**



- 13.1 The customer shall evaluate and test BUSS' supplies for the purposes of determining whether the supplies conform to their specifications and meet the applicable performance criteria (if any).
- 13.2 Supplies of machines shall be evaluated and tested within a formal acceptance procedure and during a test run (acceptance testing). If the customer fails to give written notice of acceptance or failure of acceptance within (i) forty (40) days following delivery, or (ii) twenty (20) days following completion of installation if BUSS renders assistance services for the erection, installation and taking into operation of the supplies by the customer, the supplies shall be deemed automatically accepted as of the day following the end of such period. The date of the written notice of acceptance, or the date of automatic acceptance, shall be the "acceptance date". Acceptance testing shall be successful and the supplies shall be accepted by the customer if the acceptance testing does not reveal substantial defects of the supplies. The parties may agree prior to acceptance testing on a defects classification matrix or similar so as to more concretely distinguish substantial from other defects. The customer is obliged to declare acceptance and to execute an acceptance certificate to the address of BUSS if there are no substantial defects. BUSS will cure and rectify other (i.e. non-substantial) defects of the supplies discovered within the acceptance testing and notified to BUSS, if any, under and in accordance with Clause 14 below. If the customer demonstrates that acceptance testing has revealed substantial defects of the supplies, acceptance may be refused. BUSS will perform corrective work and cure and rectify such defects and notify the customer as soon as the supplies are ready for a repeat acceptance testing. The customer shall perform the repeat acceptance testing within fifteen (15) days following the notice by BUSS. BUSS and the customer shall bear related costs in accordance with Clause 14.2. BUSS is entitled to cure and rectify twice. In case the second repeat acceptance testing fails and unless the parties agree otherwise, the customer may as the customer's sole and exclusive remedy either continue to request rectification or demand an appropriate reduction of the purchase price. BUSS on its side may reject the customer's request for further rectification if such rectification is economically overly burdensome for BUSS, in which case the customer may only demand an appropriate reduction of the purchase price.
- 13.3 Other supplies (including without limitation supplies of spare parts) shall be deemed automatically accepted unless the customer gives written notice to the contrary within thirty (30) days following delivery. BUSS will cure and rectify defects of such supplies under and in accordance with Clause 14 below.

**14 Limited supplies warranty**

- 14.1 BUSS represents and warrants that BUSS' supplies will conform to their specifications set out in the quotation and will be free of material defects in material or workmanship for the shorter period of (i) twelve (12) months from the acceptance date, or (ii) eighteen (18) months from delivery (warranty period). If delivery or taking-over of the supplies is delayed due to reasons attributable to the customer, the warranty period shall end not later than 18 months after BUSS' notification that the supplies are ready for dispatch. BUSS' warranty does in no case (further) extend to supplies meeting performance criteria during the warranty period or to the actual or intended use of its supplies or their suitability for such use.
- 14.2 In the event that BUSS' supplies fail to conform to this limited warranty, BUSS will (as the customer's sole and exclusive remedy) repair, rectify or replace non-conforming parts of its supplies or perform corrective work. BUSS will bear the costs of remedying defective

parts and of warranty services performed in its works. BUSS will also bear travel expenses incurred by it to perform a warranty service on-site or to send its personnel to the customer's facility if the warranty service cannot be carried out in BUSS' works. The customer shall bear (i) related costs to the extent exceeding the customary costs of transport, travelling and living, (ii) the costs of its personnel, of dismantling and reassembling a machine or of parts that were defective, and (iii) the costs of raw materials needed for testing. The original warranty period as per Clause 14.1 applies to repaired, rectified or replaced non-conforming parts. There shall be no new, prolonged or additional warranty period.

- 14.3 BUSS' warranty does not cover and shall be excluded in case of (i) normal wear and tear; (ii) normal expiration of consumable parts such as lamps, fuses, batteries, and other parts identified as consumables consumed in the normal course of use; (iii) use not in conformity with BUSS' indications, instructions and operating manuals and guides; (iv) improper maintenance; (v) improper storage, (vi) modification, repair or alteration without the prior consent of BUSS; (vii) specifications or instructions provided by the customer; (viii) excessive loading, use of any unsuitable material, influence of chemical or electrolytic action; or (ix) defects resulting from reasons beyond BUSS' control or caused by someone else than BUSS.

**15 No other warranties and remedies**

- 15.1 The warranties and remedies in Clauses 13 and 14 above constitute the only warranties and remedies given by BUSS with respect to its supplies and are in lieu of all other warranties and remedies.
- 15.2 Except as provided in Clauses 13 and 14 above,
- BUSS makes no representations or warranties of any kind or nature, expressly or implied, and expressly excludes any further representations and warranties, including, but not limited to, warranties of merchantability, satisfactory quality, and fitness for a particular purpose; and
  - other rights, remedies or claims of the customer for breach of warranty shall be expressly excluded. In particular, but not limited to, the customer waives any rights to withdrawal/rescission and to the bringing in of a third party (execution by substitution). BUSS shall not be liable for any damages arising from its failure to conform to a warranty.

**16 Exclusion and limitation of liability**

- 16.1 In no event shall BUSS be liable to the customer for loss of profit or revenue or business, loss of use, interruption of production, cost of capital, any and all costs relating to delay, or for indirect, punitive, special, incidental, exemplary or consequential damages, or claims by the customer's customers for such damages, whether such liability is based on contract, tort (including negligence), statute or any other basis of legal liability and whether or not such damages could be foreseen.
- 16.2 BUSS' total liability with respect to any contract, indemnity, tort (including negligence) or other basis of legal liability for those damages that are not excluded under Clause 16.1 (i.e. direct and actual damages) or not excludable shall in no case exceed in the aggregate an amount equal to the price(s) actually paid by the customer to BUSS for the supplies in question.
- 16.3 The above exclusions and limitations shall not apply to claims that arise from gross negligence or wilful misconduct of BUSS.

**17 Export control**

- 17.1 The delivery obligations of BUSS are subject to the condition that required export licences are issued and that no other restrictions imposed by mandatory export control regulations of Switzerland or



any other relevant jurisdiction exist.

- 17.2 The customer recognizes that the supplies of BUSS and related technical information, documents and materials may be subject to Swiss and/or foreign laws or regulations on export control or trade sanctions and other applicable laws. The customer undertakes to comply with all such laws and regulations applicable to the customer. In particular, the customer undertakes not to use, resell, lease or otherwise transfer BUSS' supplies in violation of such laws and regulations and not to directly or indirectly export or re-export the supplies of BUSS to any country for which such export may be prohibited by such laws and regulations.

## 18 Confidentiality and data protection

- 18.1 The supplies of BUSS may incorporate confidential or proprietary information developed or acquired by or licenced to BUSS. The customer shall take all precautions necessary to safeguard the confidentiality of the confidential or proprietary information of BUSS.
- 18.2 Neither party shall disclose, in whole or in part, any information of the other party designated as confidential to any individual, entity or other person except to employees who have a need to know and are bound to confidentiality terms not less stringent than those applicable hereunder.  
The confidentiality obligations between the customer and BUSS as set out in separate non-disclosure agreements and the like shall apply in relation to any supplies by BUSS.
- 18.3 BUSS shall be entitled to process the personal data of the customer and its personnel in order to perform the contract. Furthermore, the customer consents in particular to BUSS transmitting such data to third parties in Switzerland and abroad for the purpose of performing and maintaining the business relationships between BUSS and the customer.

## 19 Intellectual property and third-party rights

- 19.1 Each party shall retain all titles and rights to any technical documents it provided to the other party. The party receiving such documents recognizes these titles and rights and shall, without prior written consent of the other party, not make these documents available to any third party, either in whole or in part, nor use them other than for purposes of the contract.
- 19.2 Any know-how, inventions, patents, trademarks or copyrights or the like belonging to or provided by BUSS and/or used for or developed in the course of the performance of the contract by BUSS shall remain BUSS' property, and no ownership or other right shall be transferred to the customer with respect to such know-how, inventions, patents, trademarks or copyrights, independent of whether made available in form of machinery, paper, electronically or else. However, to the extent necessary and for the customer's purposes only, the customer shall be granted a limited right on a non-exclusive basis to use such know-how, invention, patents, trademarks, copyrights or the like for the operation, maintenance and repair of the supplies; this right shall not include the use of the said intellectual property for the reproduction of the supplies or parts thereof. In case of engineering services, the customer shall be permitted to use, on a non-exclusive basis, the documentation received for the purpose described in the contract. In case of doubt, engineering services shall be deemed to be made available for the procurement of corresponding supplies from BUSS solely.  
If BUSS makes changes in the BUSS technology which reflects information obtained from or as a result of the interaction with the customer, the customer shall raise no claim of interest in such changes to BUSS technology and will seek no compensation therefore. Consequently, all BUSS technology-related results, findings, inventions,

innovations, etc. shall be and will remain the sole and exclusive property of BUSS.

- 19.3 To the best of BUSS' knowledge, BUSS' supplies and services do not infringe upon third-party rights. In the event of a third-party rights infringement by its supplies, BUSS will nonetheless and under exclusion of any other rights, remedies or claims of the customer, at its sole choice and discretion, procure the right for the customer to use the supplies, or modify or replace them so that they become non-infringing.

The above

- is contingent upon (i) BUSS receiving prompt written notice from the customer of any allegation of infringement; (ii) BUSS receiving assistance from the customer in the defence (or settlement); and (iii) the actual ability of BUSS to settle or defend; and
  - shall not apply to (i) any supplies or parts thereof which have been manufactured according to the customer's design or instructions, (ii) supplies or services performed as per the customer's documentation, and (iii) the use of any supplies or parts thereof in conjunction with any product not supplied by BUSS.
- 19.4 Clause 19.3 above does not extend to the processing or manufacturing of products (or other output) by using the supplies from BUSS, and any obligations, representations or warranties of BUSS to this regard are fully excluded. As to any such processing or manufacturing (or subsequent use or commercialization of products, equipment, services, parts or use in combination, or of other output), BUSS assumes no liability whatsoever, including without limitation for non-infringement of rights of third-parties, and the customer shall indemnify and hold harmless BUSS from any respective third-party claims against BUSS.

## 20 Place of jurisdiction and applicable law

- 20.1 All disputes, controversies or differences, which may arise between the parties out of or in connection with the contract shall be settled amicably. Should the parties not come to an amicable settlement, such cases shall be submitted to the ordinary courts.
- 20.2 Exclusive venue and place of jurisdiction shall be Zurich, Switzerland, it being understood that BUSS may at its sole discretion decide to instead invoke the courts at the place of incorporation or at the principal place of business of the customer.
- 20.3 The contract shall be governed by Swiss substantive law. The application of international commercial law agreements, particularly the UN Convention on the International Sale of Goods (CISG), is excluded.
- 20.4 Where Buss, Inc. USA, Buss Japan Ltd, Buss Compounding Solutions (Shanghai) Co., Ltd. or another entity belonging to the Buss Group (and not Buss AG) is party to the contract with the customer, the above choice of law and selection of venue are subject to their validity and enforceability under local applicable law. In case of lack of validity or enforceability, (i) the exclusive venue and place of jurisdiction shall be the principal place of business of the entity belonging to the Buss Group that is the party to the contract, it being understood that BUSS may at its sole discretion decide to instead invoke the courts at the place of incorporation or at the principal place of business of the customer, and/or (ii) the contract shall be governed by the substantive laws of the principal place of business of the entity belonging to the Buss Group that is the party to the contract, whereby the application of international commercial law agreements, particularly the UN Convention on the International Sale of Goods (CISG), shall in each case be excluded.



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