

General Terms and Conditions of Brugg Pipe Systems Inc., Böttstein

1 Scope and Principles

1.1 Scope and General Terms and Conditions

These „General Terms and Conditions“ („T&Cs“) are valid for all legal relationships (offers, contract negotiations, contracts) between Brugg Pipe Systems Inc., Böttstein, with registered office in Böttstein („BRUGG“) and construction companies as its customers („CUSTOMERS“) regarding (i) the sale and delivery of goods or works („DELIVERY ITEMS“) and (ii) the supply of services („SERVICES“) by BRUGG to the CUSTOMERS.

These T&Cs form an integral part of all existing legal relationships and in particular the contracts between BRUGG and the CUSTOMER unless explicitly agreed otherwise. Provisions which deviate from these T&Cs are only legally binding if they are expressly offered by BRUGG or are accepted by BRUGG expressly and in writing.

By placing an order with BRUGG, the CUSTOMER confirms and accepts that the sale and delivery of the DELIVERY ITEMS as well as the supply of SERVICES shall be governed by these T&Cs. BRUGG reserves the right to amend these T&Cs at any time. Amendments shall be valid, as from the time of their communication to the CUSTOMER, with respect to all legal relationships between BRUGG and the CUSTOMER established thereafter. General Terms and Conditions and other contractual documents from the CUSTOMER are expressly excluded. This rule shall also apply where the CUSTOMER incorporates its general terms and conditions or other documents into an order or “order confirmation” or otherwise discloses them to BRUGG.

1.2 Offers and Formation of Contracts

All offers, price lists, product descriptions, brochures, plans and the like from BRUGG are non-binding and may be amended or withdrawn at any time, unless explicitly stated otherwise in the respective document.

Insofar as BRUGG’s offers are non-binding, a contract between BRUGG and the CUSTOMER only comes into effect as of the date of acceptance by BRUGG. Acceptance takes place by way of a written order confirmation (declaration of acceptance), the signing of a written contract or by execution of the order by BRUGG. Orders and “declarations of acceptance” from the CUSTOMER simply constitute offers to conclude a contract.

BRUGG’s order confirmations contain a detailed description of the DELIVERY ITEMS and/or SERVICES. Any change requests or discrepancies shall be submitted to BRUGG in writing within two days of receipt of the order confirmation. Where no order confirmation is issued, the description shall be taken from BRUGG’s offer or from the written contract signed by BRUGG.

1.3 Form

Declarations in text form which are transmitted or recorded by way of electronic media (email, SMS etc.) constitute written declarations by the relevant party. The sender bears the burden of proving that such declarations have been received and accessed by the recipient.

Such declarations are deemed to have been received from the moment that they are accessed by the recipient.

1.4 Description of DELIVERY ITEMS, SERVICES, Brochures, Plans etc.

All descriptions of DELIVERY ITEMS and SERVICES and information contained in brochures, plans and the like, are subject to technical modification and improvement. In principle, the information only represents the contractual properties of the DELIVERY ITEMS and SERVICES where this is explicitly indicated.

2 DELIVERY ITEMS

2.1 Order, Subject Matter and Volume

BRUGG may receive orders directly from the CUSTOMER or from a third party being authorized orally or in writing by the Customer, e.g. a building owner („THIRD PARTY“). Orders from a THIRD PARTY are deemed to be orders on behalf of and for the account of the CUSTOMER. These orders – in case of acceptance by BRUGG and irrespective of the legal relationship between the CUSTOMER and the THIRD PARTY – shall only give rise to rights and duties on the part of BRUGG and the CUSTOMER.

Articles not stocked by BRUGG, or custom-built items, particularly rigid pipes and fittings without BRUGG-approved non-standard signaling wires, fire-class pipes, spiral ducts, steel-casing pipe, elbow pipes, non-standard and normal parts contained in the catalogue or other DELIVERY ITEMS which are made to measure or pursuant to other customer specifications („CUSTOM-BUILT ITEMS“) must always be ordered in writing. The CUSTOMER is obliged to accept the full amount of the order.

Subject matter and volume of the DELIVERY ITEMS is indicated in BRUGG’s order confirmation. In other respects, clause 1.2 para. 3 of these T&C applies.

In case of an order from a THIRD PARTY, the THIRD PARTY may receive from BRUGG, upon demand and on behalf of the CUSTOMER, a written order confirmation describing the ordered DELIVERY ITEMS. In other respects, only the terms and conditions agreed between the CUSTOMER and the THIRD PARTY shall apply to the legal relationship between the CUSTOMER and the THIRD PARTY. In particular, the prices listed in the order confirmation are non-binding price recommendations. The CUSTOMER is free to decide on its own pricing with respect to its own customers. Subsequent changes to orders by the CUSTOMER, insofar as they are possible at all, may only be implemented at the expense of the CUSTOMER.

2.2 Packaging, Provision or Delivery and Unloading of Delivery Items

The provision and delivery, respectively, of the DELIVERY ITEMS („DELIVERY“) takes place in accordance with the packaging units stated in the price lists.

The CUSTOMER will be subject to an extra charge for special packaging (e.g. plastic covers, special pallets). Unless explicitly agreed otherwise, BRUGG shall make the DELIVERY available and effect DELIVERY at the place agreed with the CUSTOMER, respectively, as follows: For delivery in Switzerland "delivered at place" (DAP (named place of destination) according to Incoterms 2010) and for delivery abroad "ex works" (EXW Industriestrasse 39, 5314 Kleindöttingen). In the event of DELIVERY DAP, benefit and risk shall pass to the CUSTOMER when BRUGG places the DELIVERY ITEMS at disposal on the arriving means of transport ready for unloading at the named place of destination. In the event of DELIVERY EXW, benefit and risk shall pass to the CUSTOMER when BRUGG places the DELIVERY ITEMS at disposal at the named place (Industriestrasse 39, 5314 Kleindöttingen), not loaded on any collecting vehicle.

Any transport damage and shortfalls must be indicated on the delivery note in writing and confirmed by the carrier on the delivery note in writing. Where DELIVERY is made by post or rail, a report must be obtained from the competent post office or railway station on the day of DELIVERY. In the event of failure to comply with these instructions, BRUGG shall be absolved of any liability for compensation.

Where DELIVERY is delayed or impossible for reasons which are outside the control of BRUGG (e.g. refusal to accept delivery, postponements, etc.), DELIVERY ITEMS shall be stored on behalf of the CUSTOMER and at the CUSTOMER's risk.

Interim storage of the DELIVERY ITEMS and call-off DELIVERIES („Call-off Orders") are only possible under certain circumstances and must be requested from BRUGG in advance on a case by case basis. Any additional costs shall be borne in full by the CUSTOMER. Unloading the DELIVERY ITEMS is generally a matter for and the responsibility of the CUSTOMER.

The CUSTOMER may appoint BRUGG to unload the DELIVERY ITEMS ("UNLOADING"). An order for UNLOADING the DELIVERY ITEMS must be issued with the purchase order and the CUSTOMER will be subject to an extra charge in this regard. Where a request for UNLOADING at the building site is issued by the CUSTOMER or a THIRD PARTY directly to the carrier or another third party authorized by BRUGG („BRUGG VICARIOUS AGENT"), the latter is deemed to have been authorised by the CUSTOMER. The instructions of the BRUGG VICARIOUS AGENT must be complied with in any event. BRUGG shall not be liable for damage caused by non-compliance with the instructions of the BRUGG VICARIOUS AGENT.

The BRUGG VICARIOUS AGENTS are instructed to refrain from carrying the DELIVERY ITEMS into the CUSTOMER's warehouse and from personally unloading them using the CUSTOMER's handling equipment. Where the CUSTOMER directly instructs the BRUGG VICARIOUS AGENT to carry out such tasks, BRUGG assumes no liability.

BRUGG accepts no liability for damage to persons or property arising in the course of UNLOADING. This expressly also applies where handling equipment is provided by BRUGG or by BRUGG VICARIOUS AGENTS.

Where DELIVERIES which are deposited at the destination at the agreed delivery time but in absence of the CUSTOMER, BRUGG assumes no liability for damage or loss of the DELIVERY ITEMS. The CUSTOMER accepts the DELIVERY ITEMS as received without signing of the delivery notes.

Where the DELIVERY ITEMS are collected by the CUSTOMER ex BRUGG warehouse, the CUSTOMER is responsible for loading. Where the CUSTOMER or THIRD PARTY requests loading to be carried out by BRUGG, BRUGG shall assume no liability for any resulting damage. The CUSTOMER is responsible for the operational safety of the vehicle, in particular securing the cargo and compliance with the permitted payload, as well as ensuring that its employees or agents, on BRUGG's premises, observe BRUGG's rules on health and safety at work.

2.3 Warranty

BRUGG warrants to the CUSTOMER that the DELIVERY ITEMS are free of substantial defects in the material and workmanship at the time of the dispatch. Any material warranty which goes beyond this, as well as any legal warranty, is expressly excluded.

The CUSTOMER shall inspect the DELIVERY ITEMS without undue delay following DELIVERY at the agreed delivery point and notify BRUGG of any complaints, in writing, within 10 working days (the postmark shall determine compliance with the time limit). If the CUSTOMER fails to comply with this, or where the DELIVERY ITEMS are processed without inspection, the DELIVERY ITEMS are deemed to have been accepted.

Where DELIVERY ITEMS, which are subject to a complaint, are processed by the CUSTOMER or a THIRD PARTY without the written consent of BRUGG, the warranty shall be forfeit.

After receiving notification of defects by the CUSTOMER, BRUGG may choose whether to inspect the affected DELIVERY ITEMS on site or request that the DELIVERY ITEMS be returned to BRUGG. BRUGG will examine the warranty claim and inform the CUSTOMER whether the asserted defect is covered by the warranty or not. The CUSTOMER shall store the DELIVERY ITEMS until the complaint has been finally clarified.

Where the claim under warranty is justified, BRUGG shall, at its own discretion, either rectify all defects in the DELIVERY ITEMS or replace them, free of charge. There is no right to rescind the Contract ("Wandlung"), to reduction of the purchase price ("Minderung") or substitute performance.

Where there is no right to claim under warranty, the CUSTOMER shall bear all costs which BRUGG incurs as a result of the assertion of the claim which was not covered by the warranty. These costs include, in particular, the cost of transportation, installation and labour.

BRUGG gives no warranty where the CUSTOMER or a THIRD PARTY alters or repairs the affected DELIVERY ITEM without prior written consent of BRUGG or in case of careless handling of the DELIVERY ITEM.

Unless explicitly agreed otherwise, claims under warranty shall lapse on expiry of two years from DELIVERY of the DELIVERY ITEM concerned. With respect to DELIVERY ITEMS repaired or replaced by BRUGG, the two-year limitation period shall apply as from DELIVERY of the original DELIVERY ITEM.

Any support provided by BRUGG in the investigation or removal of defects shall take place without prejudice to the existence or scope of the warranty.

2.4 Liability and Exclusion of Liability

Liability is governed by the applicable statutory provisions. However, BRUGG shall in no event be liable for: (i) ordinary negligence, (ii) indirect or collateral damages or consequential loss or loss of profit, (iii) unrealized savings, (iv) damages due to delayed DELIVERY or SERVICES as well as (v) any acts or omissions by BRUGG VICARIOUS AGENTS, whether contractually or non-contractually.

BRUGG shall not be liable for loss caused by force majeure, particularly natural events, ice, snow, fire, strike, war, terrorist attack and official instructions. Furthermore, BRUGG shall not be liable for loss resulting from the improper use of the DELIVERY ITEMS or using them in breach of contract or unlawfully, or resulting from the fact that there was insufficient support from the CUSTOMER.

In addition, BRUGG shall not be liable for damage caused by the following:

- incorrect transportation and/or storage;
- incorrect installation, such as installation without following the installation guidelines and instructions and/or the installation manual or (in absence of manuals/guidelines) without following the rules of professional installation or installation outside the recommended installation environment;
- incorrect connection (welding seams, screw sockets, compression joints, coupling sleeves, wall ducts);
- exceeding the permitted fluid temperature, operating pressure and the use of unauthorised fluids;
- improper use of the DELIVERY ITEMS or using them in breach of contract or unlawfully;
- failure to maintain or alteration of the DELIVERY ITEMS;
- failure to observe local and geographical conditions;
- external influences such as sub-surface erosion, subsidence, landslide or the effects of chemicals;
- use of incompatible spare parts or ancillary equipment (e.g. power supply);
- Breach of Customer's obligations under clause 6 of these T&Cs. reduction from the supplier.

2.5 Returns

In principle, DELIVERY ITEMS cannot be returned. In exceptional cases, and only for items defined in the catalogue as standard and normal items, DELIVERY ITEMS may be returned, provided they are in their original packaging, complete, undamaged, dry and clean. The CUSTOMER will be reimbursed for the invoiced value of the goods after deduction of 25% and any transportation, handling, cleaning and disposal costs.

Flexible pipes under 80 metres and CUSTOM-BUILT ITEMS cannot be returned.

3 Services

3.1 Subject Matter and Scope

Subject matter and scope of the SERVICES are conclusively stated in the respective contract.

BRUGG shall provide, in particular, SERVICES relating to laying, installation and secondary insulation („INSTALLATION WORK“), engineering work (dimensioning of supply networks, statistical measurements of supply networks, drafting plans for expansion zones, measurement of pressure and heat loss; drafting loop configurations/monitoring systems, lists of materials from plan etc.) and assisting planners (preparation of tendering documents (project development, costing etc.) and providing assistance in the development of technical documents (calculations, planning documents etc.)).

3.2 Delivery

The CUSTOMER shall inspect the SERVICES without undue delay following delivery and notify BRUGG of any complaints, immediately, in writing, and in any case within 10 working days. If the CUSTOMER fails to comply with this, SERVICES are deemed to have been accepted.

3.3 Liability or Responsibility for Result

Unless explicitly agreed otherwise, BRUGG shall be liable to the CUSTOMER only for the diligent performance of services and thus, in respect of the SERVICES, accepts no responsibility for the result.

BRUGG's SERVICES are rendered on the basis of the documentation provided by the CUSTOMER and/or THIRD PARTY. The CUSTOMER shall be responsible for ensuring that documentation is up to date, complete and accurate. BRUGG accepts no liability for incorrect documents or information.

No claims under warranty against BRUGG may be derived from any advice on the choice of materials.

Otherwise see clause 2.4 of these T&Cs with regard to liability.

In the event that BRUGG has expressly accepted responsibility for the result, clause 2.3 of these T&Cs shall apply mutatis mutandis.

4 Prices, Invoicing and Payment

The prices are those contained in BRUGG's respective offers and price lists at the time of the order.

Unless explicitly agreed otherwise, SERVICES rendered by BRUGG shall be charged according to time spent. Out-of-pocket expenses and cost of materials will be levied by way of an extra charge.

Where the underlying initial basis changes significantly during the period of the contract or BRUGG provides further DELIVERY ITEMS or SERVICES, BRUGG may even alter fixed levels of remuneration. All prices and remuneration are in Swiss Francs exclusive of value added tax and strictly net. Value added tax and other taxes shall be borne by the Customer.

In general, the prices are quoted according to the agreed place of delivery (see Clause 2.2), which means for DELIVERY in Switzerland delivered at place (DAP according to Incoterms 2010) and for DELIVERY abroad ex works (EXW according to Incoterms 2010). However, for DELIVERIES according to DAP (and – where applicable – explicitly otherwise agreed DELIVERIES) the following applies:

In the case of delivery destinations with access restrictions (such as e.g. mountainous areas, access roads requiring payment of a toll, no access to lorry trailers, weight restrictions or seasonal restrictions) a surcharge will be levied. For DELIVERIES according to DAP (and – where applicable – explicitly otherwise agreed DELIVERIES) the actual transport costs will be levied if the invoiced value of the goods in the DELIVERY or partial DELIVERY is less than CHF 3'500 and in the case of shipment by rail, Cargo Domizil, post and air.

The price for installation work includes one journey to the building site. In the event of waiting periods or other additional expenses which are not BRUGG's responsibility, these shall be charged on a time and materials basis. All waste materials arising from the INSTALLATION WORK shall be disposed of free of charge in accordance with ISO 14001. The disposal of old supply pipes or components which were not supplied by BRUGG shall be charged on a time and materials basis.

Invoicing shall take place at the full discretion of BRUGG either prior to or after DELIVERY of goods or SERVICES.

BRUGG's invoices shall be paid within 30 days of the invoice date. No deductions may be made from the invoice amount unless expressly agreed otherwise. Set-off against counter claims is not permitted.

Cash discounts are only permitted where this is expressly stated on the invoice and the invoice is settled within the given period. Compliance with the payment deadline is determined by the date on which BRUGG receives payment. Unauthorised discounts will be invoiced.

The due date is also the expiry date. Where invoices are not paid within the 30-day payment period, default interest at a rate of five percent (5%) per annum will be payable as from the due date, as well as the cost of any reminders, without the need for further notice of default. BRUGG expressly reserves the right to claim any further damages resulting from the delay and to rescind the contract and claim any further compensation for damages. In the case of delay in payment, BRUGG shall be entitled to have the debt collected by a third party at the expense of the CUSTOMER. Any complaints regarding invoices shall be submitted in writing within 14 days of receipt of the invoice, otherwise invoices are deemed to have been accepted. Payments shall also be made in due time where minor parts of the DELIVERY ITEM and/or SERVICES, which do not make the use of the DELIVERY ITEMS impossible, are missing or require rework.

5. Delivery Periods and Deadlines

BRUGG always endeavours to meet the agreed delivery times and deadlines. BRUGG cannot however guarantee compliance with delivery times and deadlines. In particular, BRUGG accepts no liability in the event of the postponement of delivery dates as a result of delays caused by the CUSTOMER or third parties such as e.g. delayed conceptual and/or static and/or other releases, delayed signing of time-critical appendices, changes to DELIVERY ITEMS or SERVICES or to the volume of DELIVERY ITEMS or SERVICES requested by the CUSTOMER, or in general due to a failure by the CUSTOMER and/or a third party to provide any or sufficient preparation or assistance or due to new findings.

In the case of INSTALLATION WORK, BRUGG must be notified in good time (at least 10 working days in advance) of the date for carrying out the work. Continuous installation without waiting periods or interruptions must be ensured. In the event of waiting periods or other expenses, these will be charged on a time and materials basis.

In case of express deliveries (DELIVERIES of stock goods within 24 hours or CUSTOM-BUILT ITEMS within 72 hours) or explicitly requested fixed delivery dates, BRUGG shall levy an express-surcharge („EXPRESS SURCHARGE“). BRUGG also reserves the right to levy an Express Surcharge where agreed delivery periods are reduced at the request of the CUSTOMER.

6. Obligations of the CUSTOMER

The CUSTOMER shall undertake all preparation and assistance measures required in connection with the DELIVERY ITEMS and SERVICES properly and in good time (incl. the procurement of any necessary official authorizations for fencing off and using public property). In particular the CUSTOMER shall provide BRUGG with all the necessary information and equipment relating to the DELIVERY ITEMS and SERVICES in good time and shall inform BRUGG, in writing, about any particular official and other regulations, guidelines and peculiarities.

The CUSTOMER shall also inform BRUGG, in writing, of any special operational requirements which differ from customary recommendations or those issued by BRUGG. The CUSTOMER shall allow BRUGG to have the necessary access and ensure unimpeded vehicular access to the unloading point and/or building site by way of paved roads for vehicles of up to 40 tonnes. In addition, the CUSTOMER is responsible for the storage areas for materials and for power connections as well as for ensuring SUVA-compliant safety measures (scaffolding, supports etc.) on the building site. The CUSTOMER shall carry out the laying of BRUGG supply pipes for district heating and water as well as ancillary services such as excavation work, brick-laying and electrics in accordance with BRUGG's standards.

The CUSTOMER is obliged to comply with all the instructions and assembly and processing directions provided by BRUGG and/or on the packaging or in brochures and technical manuals, relating to the DELIVERY ITEMS and SERVICES. The brochures and technical instructions are - if not supplied - available from BRUGG. In the case of INSTALLATION WORK, the CUSTOMER shall comply with the method specified by BRUGG.

All underground pipes must be embedded in compacted sand-fill with a thickness above and below the pipe of at least 10cm.

The ends of the water pipes must remain free of external water. Structures and shafts in which pipes are to be introduced must be made water tight. Any water which does get in must be able to drain away quickly. Continuing pipes must not be connected until installation of the connectors is complete. The continuing pipes inside the building must be connected such that the connections are not subject to expansion forces.

The pipe trench must remain free of water throughout the entire INSTALLATION WORK. Sufficient space shall be allowed for the work to be carried out by BRUGG VICARIOUS AGENTS, particularly secondary insulation of connection points.

The BRUGG work sheets „Excavation and Installation“ must be complied with at all times.

The electrical connections for the monitoring system, outside the pipe network, must be provided and maintained by the CUSTOMER.

7. Other Provisions

7.1 Appointment of Third Parties

BRUGG is entitled to consult third parties with regard to performance of the contract. BRUGG shall vouch for the services of third parties as it would for its own.

7.2 Title and Intellectual Property

BRUGG or any of its licensors shall retain title to all rights to the DELIVERY ITEMS and SERVICES, specifications, brochures, plans, documents and data carriers, including patents, copyrights and other intellectual property. The CUSTOMER recognises these rights of BRUGG or its licensors.

BRUGG confirms that, to the best of its knowledge, the descriptions of DELIVERY ITEMS and SERVICES, brochures, plans, documents and data carriers submitted to the CUSTOMER are not in breach of any third-party rights. However, BRUGG provides no guarantee that the descriptions of DELIVERY ITEMS and SERVICES, brochures, plans, documents and data carriers submitted to the CUSTOMER are not in breach of any third-party rights.

BRUGG shall retain title to the DELIVERY ITEMS until receipt of the remuneration. The CUSTOMER is obliged to assist with measures to protect BRUGG's property. The CUSTOMER authorises BRUGG to enter its ownership rights in the corresponding register of proprietary rights insofar as BRUGG wishes to do so.

7.3 Severability

Where individual provisions of these T&Cs are invalid or ineffective, this shall have no effect on the validity of the other provisions or on the T&Cs as a whole.

7.4 Applicable Law and Jurisdiction

All legal relationships between the CUSTOMER and BRUGG shall be governed by substantive Swiss law. The Vienna Sales Convention shall not apply.

The exclusive place of jurisdiction shall be the place where BRUGG has its registered office. However, BRUGG shall also have recourse to the court located in the place where the CUSTOMER has its registered office or domicile.

Kleindöttingen, 16-04-01