

--- PARTNERS & SUPPLIERS

Purchasing & subcontracting

For BMGE suppliers, subcontractors and freelancers and for partners to whom BMGE refers a project.

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These terms apply to suppliers, subcontractors and freelancers engaged by BMGE and to partners to whom BMGE refers a project.

§ 1 Scope

- (1) These terms apply to all purchase orders and contracts placed by Berger-Münch Engineering, Lda., Estrada Nacional 10, Complexo Industrial Sado Internacional, 283 A, Armazém D23, 2910-828 Setúbal, Portugal (including its permanent establishment in Germany, Eichelberg 15, 93138 Lappersdorf) ("BMGE") for supplies, works and services (Parts A and B) and to projects that BMGE refers to a partner (Part C). The contracting party is referred to below as the "Contractor".
- (2) These terms apply only to businesses. The Contractor's deviating terms do not apply, even if BMGE does not expressly object to them or accepts performance without reservation. Individual agreements take precedence.
- (3) These terms, in the version applicable at the time of the order, also apply to future orders without renewed reference.

§ 2 Part A – Orders and conclusion of contract

- (1) Orders and contracts are binding only if issued or confirmed by BMGE in text form. The Contractor confirms each order within three working days in text form; thereafter BMGE may cancel the order free of charge until the confirmation is received.
- (2) The Contractor's offers and estimates are free of charge for BMGE unless otherwise agreed.
- (3) BMGE may request changes to the type, scope and timing of performance insofar as they are reasonable for the Contractor. The Contractor notifies the effects on price and schedule without delay in text form; these are adjusted by agreement on the basis of the agreed prices.

§ 3 Part A – Prices and payment

- (1) The agreed prices are fixed prices. Unless otherwise agreed, they include packaging, transport and insurance to the delivery address or site specified by BMGE (DDP Incoterms 2020).
- (2) Invoices must state the order number, the project and the mandatory statutory details; without them they fall due only once completed. Proof of delivery and performance (delivery note, signed timesheets, measurements) must be attached.
- (3) Payments are made within 30 days of delivery or acceptance and receipt of a proper invoice, or within 14 days less 2 % discount. For works, the Contractor may request interim payments in the amount of the value of the work performed and evidenced.
- (4) Payment does not constitute acceptance of performance as conforming. BMGE has rights of set-off and retention to the extent provided by law.

- (5) The Contractor may assign claims against BMGE to third parties only with BMGE's consent, which will not be unreasonably withheld. Statutory rules on monetary claims between merchants remain unaffected.

§ 4 Part A – Deadlines and delay

- (1) Agreed delivery and completion dates are binding. If the Contractor realises that a date cannot be met, it informs BMGE without delay in text form, stating the reasons and expected duration.
- (2) In the event of delay, BMGE has the statutory rights. For works on sites, if a completion date agreed as binding is culpably exceeded, the Contractor owes a contractual penalty of 0.2 % of the net contract sum per working day, up to a maximum of 5 % of the net contract sum. The penalty is credited against damages for delay; BMGE may claim it until final payment.
- (3) Partial or early deliveries require BMGE's consent.

§ 5 Part A – Delivery, passing of risk and documentation

- (1) Each delivery is accompanied by a delivery note stating the order number, project and contents. Deliveries to sites must be scheduled with BMGE.
- (2) Risk passes to BMGE upon handover at the delivery address for supplies and upon acceptance for works.
- (3) With delivery or before acceptance, the Contractor hands over the documents required for operation, maintenance and proof, in particular data sheets, declarations of conformity, operating instructions, test and measurement reports (e.g. under DIN VDE 0100-600 or the corresponding Portuguese rules), as-built drawings and project and program files.

§ 6 Part A – Quality and claims for defects

- (1) The Contractor performs in accordance with the generally recognised technical rules, the applicable standards and safety regulations at the place of performance and BMGE's specifications. Products supplied comply with applicable regulations (in particular CE marking, RoHS and REACH). Deviations from specifications or approved samples require BMGE's consent in text form.
- (2) If the Contractor has concerns about BMGE's specifications or about preliminary work by others, it informs BMGE without delay in text form before performing the work.
- (3) BMGE inspects deliveries on receipt for visible transport damage, identity and quantity and gives notice of defects found within ten working days. Other defects are notified within ten working days of their discovery. To this extent the Contractor waives any further duties of inspection and notification.
- (4) Statutory claims for defects apply. Under purchase contracts, BMGE may choose the type of remedy. In urgent cases, in particular to avert danger or significant damage or where BMGE's end customer demands immediate rectification, BMGE may, after informing the Contractor, remedy the defect itself or have it remedied at the Contractor's expense.
- (5) Claims for defects become time-barred 36 months after delivery for supplies and five years after acceptance for buildings, work on buildings and items used for a building, unless the law provides for a longer period.

§ 7 Part A – Liability, indemnity and insurance

- (1) The Contractor is liable in accordance with statutory law. It indemnifies BMGE against third-party claims based on a defect in its performance, an infringement of third-party intellectual property rights by its supply or other culpable conduct of the Contractor or its agents.
- (2) For the duration of the cooperation, the Contractor maintains business or professional liability insurance with cover of at least EUR 2 million per incident for personal injury and property damage and provides proof on request. BMGE's further claims remain unaffected.

§ 8 Part A – Rights in work results

- (1) In drawings, programs, project files (e.g. ETS, PLC or visualisation projects), calculations and other work results that the Contractor prepares for BMGE, the Contractor grants BMGE, upon their creation, the exclusive, transferable right of use unlimited in time and territory, including the right to modify them and to pass them on to end customers. The remuneration for this is included in the agreed price.
- (2) The Contractor's pre-existing rights (e.g. its own software libraries) remain with it; it grants BMGE a simple, perpetual right of use to the extent required to use the work results.
- (3) Documents, drawings and tools provided by BMGE to the Contractor remain BMGE's property, may only be used for the order and must be returned or deleted on completion.

§ 9 Part B – Subcontractors: duties on site

- (1) The subcontractor performs its work under its own responsibility with its own qualified staff. It uses further subcontractors only with BMGE's prior consent in text form.
- (2) It complies with occupational health and safety rules, the site regulations and the coordination instructions of BMGE's site management and keeps the agreed daily or work reports.
- (3) It complies with its statutory obligations towards its employees, in particular regarding minimum wage, working time, social security, posting of workers (e.g. A1 certificate) and residence and work permits. It indemnifies BMGE against claims brought against BMGE because of a breach by the subcontractor or its subcontractors, in particular under Section 13 of the German Minimum Wage Act (MiLoG), Section 14 of the German Posted Workers Act (AEntG) and Section 28e (3a) of the German Social Code IV.
- (4) Before starting and on request, the subcontractor provides evidence of the licences and certificates required for its work, in particular trade registration or entry in the German register of skilled trades or the licence required in Portugal (e.g. IMPIC licence or DGEG registration), clearance certificates from social security and tax authorities, for construction work in Germany the exemption certificate under Section 48b of the German Income Tax Act (EStG), and proof of insurance. Without the exemption certificate, BMGE withholds the statutory tax deduction.
- (5) The subcontractor's work is formally accepted. The subcontractor gives notice of completion in text form; BMGE carries out acceptance within twelve working days.
- (6) To secure claims for defects in works on buildings, BMGE may retain 5 % of the net final invoice amount for the duration of the warranty period. The subcontractor may replace the retention at any time with an unlimited, absolute guarantee from a credit institution or credit insurer authorised in the EU.

§ 10 Part B – Customer protection and appearance

- (1) Towards BMGE's end customer, the subcontractor appears only in BMGE's name or neutrally unless otherwise agreed. It makes no offers of its own to the end customer, gives no commitments on prices, dates or change orders and accepts no instructions or payments from the end customer; it forwards the end customer's requests to BMGE.
- (2) During the cooperation on the project and for 24 months thereafter, the subcontractor will not, without BMGE's prior consent in text form, accept orders from end customers it only came to know through BMGE for work that is the subject of the project. During this period it will not actively poach BMGE employees.

§ 11 Part B – Freelancers

- (1) Freelancers provide their services as independent businesses. Within the technical and scheduling requirements of the project, they are free to organise their working time, place and methods, generally use their own equipment and may work for other clients. They are not integrated into BMGE's organisation and are not subject to any general right to give instructions.
- (2) Freelancers are responsible for taxes and social security contributions on their remuneration. They inform BMGE without delay if they come to work predominantly for BMGE so that the parties can clarify their social security status.
- (3) Parts A and D and § 10 otherwise apply accordingly to freelancers.

§ 12 Part C – Referral of a project by BMGE

- (1) If BMGE refers a customer or project to the partner, BMGE informs the partner in text form (registration). Within ten working days the partner may notify BMGE in text form that it already knew the customer for this project (contact within the last twelve months); otherwise the referral is deemed acknowledged.
- (2) If, as a result of the referral, the partner concludes a contract with the customer for the project within twelve months of the registration, it owes BMGE a commission. The amount is set out in the commission agreement; in its absence, it is 10 % of the net remuneration actually paid by the customer for the project, including change orders. Commission on follow-up orders from the same customer arises only if agreed.
- (3) The partner performs the services for the customer in its own name and under its own responsibility. BMGE is not liable for the performance of the contract; the partner indemnifies BMGE against the customer's claims under that contract.
- (4) Each quarter, the partner informs BMGE in text form of the contracts concluded, change orders and payments received from the referred customer; BMGE invoices on that basis. The commission is payable 30 days after receipt of the invoice and is subject to statutory VAT where applicable. On request, the partner's tax adviser or auditor confirms the information; if a discrepancy of more than 5 % to BMGE's detriment results, the partner bears the costs, otherwise BMGE.
- (5) The partner does not pass the referred customer or project on to third parties in order to avoid the commission. If the partner advises the customer, the disclosure obligation under § 6 of the Partner terms applies accordingly in favour of BMGE.

§ 13 Part D – Confidentiality, data protection and compliance

- (1) The Contractor treats as confidential all non-public information of BMGE and its customers, in particular project documents, access data, prices and customer data, and uses it only for the order. This obligation applies until three years after the end of the cooperation; for trade secrets and access data, for as long as they exist. It publishes references to projects of BMGE or its customers only with BMGE's consent.
- (2) If the Contractor obtains access to systems or personal data of BMGE or its customers, it processes them only on instructions and, on request, concludes a data processing agreement under Art. 28 GDPR.
- (3) The Contractor complies with applicable rules against corruption, money laundering, undeclared work and illegal employment as well as sanctions and export regulations. It grants no undue advantages to employees of BMGE or its customers.
- (4) If the Contractor culpably breaches § 10 (2) or § 12 (5), it owes a contractual penalty to be determined by BMGE at its reasonable discretion of up to 15 % of the net value of the affected order, at least EUR 2,500. In the event of a dispute, its appropriateness may be reviewed by the competent court. Several breaches arising from the same matter count as one breach. The penalty is credited against any damages; both parties may prove higher or lower damage.

§ 14 Part D – Termination

- (1) BMGE may terminate a contract for works at any time before completion; the Contractor then receives the agreed remuneration less saved expenses and other earnings in accordance with statutory law.
- (2) Either party may terminate for good cause; BMGE in particular if the Contractor, despite a warning setting a reasonable deadline, breaches obligations under §§ 9, 10 or 13, or if the end customer terminates the contract with BMGE for reasons for which the Contractor is responsible.

§ 15 Part D – Final provisions

- (1) Portuguese law applies. German law applies to orders placed by the German permanent establishment and to referrals made through it. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (2) The exclusive place of jurisdiction is Setúbal, Portugal, and for orders placed by the German permanent establishment Regensburg, Germany. BMGE may also sue the Contractor at its general place of jurisdiction.
- (3) The place of performance for supplies and services is the delivery or performance address specified by BMGE.
- (4) Notices require text form; notices via the extranet suffice.
- (5) If any provision is invalid, the remaining provisions remain valid; the invalid provision is replaced by the statutory provisions.
- (6) These terms are available in German, Portuguese and English. The version in the language of the order or agreement prevails.